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IN THE
SUPREME COURT OF THE UNITED STATES

_____ Term, 197__

No._____

B. DALE BALL, Director of the Department of Agriculture of the State of Michigan,

RONALD M. LEACH, Acting Chief of the Food Inspection Division of the Michigan Department of Agriculture, and

FRANK J. KELLEY, Attorney General of the State of Michigan,

Petitioners,

v.

ARMOUR AND COMPANY, a Delaware corporation,

WILSON & CO., INC., a Delaware corporation, and

GEO. A. HORMEL & COMPANY, a Delaware corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioners B. Dale Ball, Director of the Department of Agriculture of the State of Michigan, Ronald M. Leach,

Acting Chief of the Food Inspection Division of the Michigan Department of Agriculture, and Frank J. Kelley, Attorney General of the State of Michigan, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on October 13, 1972.

Opinion Below

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. This opinion of the Court of Appeals reverses a decision rendered by the United States District Court for the Western District of Michigan, Southern Division. The District Court opinion also appears in the Appendix.

Jurisdiction

The judgment of the Court of Appeals for the Sixth Circuit was entered on October 13, 1972 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether the Federal Wholesome Meat Act preempts the Michigan Comminuted Meat Law.

2. Whether Congress, under the Interstate Commerce Clause, has the power to preempt a state law enacted for the protection of the health of its citizens.

3. Whether a Federal District Court should abstain from issuance of an injunction against enforcement of a

state criminal statute where no irreparable harm can be established.

4. Whether a Federal District Court can grant equitable relief to a party that does not act in good conscience and does not plan to do equity.

Statutory Provisions Involved

Federal Wholesome Meat Act, 21 USC §601 et seq and regulations promulgated pursuant thereto.

Michigan Comminuted Meat Law, 1952 PA 228; MCLA 289.581 et seq; MSA 12.964(1) et seq.

Statement of the Case

In the exercise of its police powers, the State of Michigan enacted a comminuted meat law, 1952 PA 228; MCLA 289.581 et seq; MSA 12.964(1) et seq, superseding its earlier law dealing with the regulation of manufacturing and selling of sausage products. As its title reveals, this Michigan law was enacted to provide for the protection of the public health and prevention of fraud and deception by prohibiting the manufacture, sale and offering for sale of sausage products which are adulterated, which may be deleterious to the public health, or fail to comply with *minimum* ingredient standards defined in the act.

There is no claim that this Michigan law is unreasonable, arbitrary or capricious or that it denies due process of law or equal protection of the law to any person.

Subsequently, in 1967, Congress enacted amendments to the Federal Meat Inspection Act, 21 USC §601 et seq, and

authorized the Secretary of Agriculture to promulgate regulations pursuant thereto. The regulations of the Secretary of Agriculture also provided *minimum* ingredient requirements for sausage products for the purpose of identifying such products.

Respondents thereupon instituted action in the United States District Court for the Western District of Michigan, Southern Division, contending that the Federal act and regulations promulgated pursuant thereto preempted the Michigan act. Respondents filed their action seeking a declaratory judgment and injunctive relief against enforcement of the Michigan statute. Prior to enactment of the Federal act and up to the present moment, respondents have complied with both Federal and Michigan standards. They are able to do so because Michigan standards are higher than those required by Federal regulations and therefore, in complying with Michigan standards, they also comply with Federal standards.

As delineated in the Opinion of the Court of Appeals, to be legally saleable in Michigan, sausage products must contain only striated muscle derived from cattle, sheep, or swine, whereas, under Federal regulations, sausages may be prepared from *any part* of cattle, sheep, swine, or goats capable of use as human food, *including the use of heart, tongue, liver, cracklings, stomach, lungs, esophagus, udder, lips, ears or snouts.*

Contrary to Michigan law, Federal regulations permit up to 15% of poultry products in "cooked smoked sausage."

Michigan law prohibits use of cereal and soya binders or extenders and certain milk derivatives whereas these substances are permitted to be used in sausage products under Federal regulations.

Michigan law requires a minimum protein content of 12%, whereas Federal regulations have no minimum percentage of protein content.

Under Michigan law a sausage manufacturer must obtain a license for each plant or place of business where sausage products are manufactured. Violation of the comminuted meat law is a misdemeanor and two convictions within a period of one year may, after a hearing, result in suspension or revocation of the license.

The District Court refused to issue an injunction against enforcement of the state's criminal statute and this decision was reversed by the Court of Appeals.

Reasons for Granting the Writ

1. The decision of the Court of Appeals below is contrary to the firmly established rule that a Federal District Court may not enjoin enforcement of state criminal laws where there is no basic constitutional right involved.

Respondents seek to enjoin Michigan state officials from invoking criminal sanctions against them for violation of a state law enacted to protect the public health and general welfare. Although an opportunity was presented to one of the respondents to challenge the validity of the state law in the state court, respondents seek the protection of a Federal forum by filing an equitable action to enjoin state officials from enforcement of the state law. Such action was taken without any showing that a fundamental constitutional right is threatened by enforcement of the state's criminal statute.

This Court has developed a clear line of authority strongly adhering to the proposition that Federal courts should

deny injunctive relief which seeks to prevent enforcement of state criminal laws until the state courts have spoken to the constitutional issues involved. *Spielman Motor Co.* v *Dodge,* 295 US 89, 95 (1935); *Hygrade Provision Co.* v *Sherman,* 266 US 497, 500 (1925); *Younger* v *Harris,* 401 US 37 (1971); *Percy* v *Ledesma,* 401 US 82 (1971).

In *Fenner* v *Boykin,* 271 US 240, 70 L ed 927 (1926), the court stated that:

> "• • • [The] cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the state and must decide when and how this is to be done. • • • An intolerable condition would arise if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some Federal court. Hygrade Provision Co. v. Sherman, 266 U.S. 497, 500, 69 L. ed. 402, 406, 45 Sup. Ct. Rep. 141."

Reaffirmation of this doctrine by this Court appears in:

Watson v *Buck,* 313 US 387, 400; 85 L ed 1416, 1432 (1941);

Douglas v *City of Jeanette,* 319 US 157, 163-165; 87 L ed 1324, 1329 (1943);

Great Lakes Dredge & Dock Co. v *Huffman,* 319 US 293, 298; 87 L ed 1407, 1411 (1943);

Shipman v *DuPre,* 339 US 321; 94 L ed 877 (1950);

Samuels v *Mackell,* 401 US 66; 27 L ed 2d 688 (1971).

As noted in *Samuels* v *Mackell,* the fact that an alternative prayer for declaratory judgment is incorporated into the proceeding seeking injunctive relief would not change the results.

It is recognized that in *Dombrowski* v *Pfister,* 380 US 479, 14 L ed 2d 22 (1965) and *Zwickler* v *Koota,* 389 US 241, 19 L ed 2d 444 (1967), an exception to this general rule was carved out where "special circumstances" exist. This exception, however, is not applicable to the case at hand because the nature of the state proceedings will not affect basic constitutional rights in this matter, nor is there any indication that state courts will fail to recognize federal rights in the enforcement of its criminal laws.

In applying the concepts of federalism, it is to be assumed that the state court and prosecutors will give full recognition to constitutional limitations and to federal laws.

Another basic concept in the application of equitable jurisdiction that was not considered by the Court of Appeals is the requirement that a party who invokes the equitable jurisdiction of the Federal District Court must do equity in order to obtain equity. The District Court took full cognizance of this equitable concept and correctly ruled that, even if Congress may have provided a basis for preempting the state law (which petitioners vehemently deny) the court of equity is not obliged to employ its powers where to do so would compel an inequitable result.

The District Court said, "Congress felt that meat packing companies were unwilling to voluntarily act in the

public interest and thus passed a law forcing them to meet their public obligations. It is indeed unfortunate that [respondents] fervor for profits make them a prisoner of inequity." Thus the refusal of the District Court below to invoke discretionary equitable powers in compliance with sound equitable principles should not have been reversed by the Court of Appeals. As noted in *Great Lakes Co.* v *Huffman,* 319 US 293, 87 L ed 1407 (1943), when a federal court is called upon in a declaratory judgment action to adjudicate an equitable cause, the district court must be free to grant or withhold relief upon equitable principles. It is also recognized that the federal district courts possess broad equitable powers, *Supreme Tribe of Ben-Hur* v *Cauble,* 255 US 356, 65 L ed 673 (1921), and that, where the public interest is involved, its inherent equitable powers assume a broad, flexible character, *Porter* v *Warner Holding Co.,* 328 US 395, 90 L ed 1332 (1946).

2. The decision below raises a significant problem concerning the relation between federal and state jurisdiction.

(a) The power of Congress under the interstate commerce clause does not authorize it to void traditional state laws enacted to protect the health of its citizens. In *Pike* v *Church,* 397 US 137, 25 L ed 2d 174, 90 S Ct 844 (1970), the court enunciated a principle governing the limits of the interstate commerce power of Congress to void a state law. This principle was stated to be that, where the state law regulates evenhandedly to effectuate a legitimate public interest and its effects on interstate commerce are only incidental, it will be upheld unless the burden on such commerce is clearly excessive in relation to the putative local benefits.

Applying this principle to the case at hand, the Michigan Comminuted Meat Law established minimum requirements

to effectuate a legitimate local public interest and these minimum requirements are being imposed evenhandedly upon all meat manufacturers, foreign and domestic. Respondents have been complying with these reasonable requirements for many years and would have continued to do so without raising any question were it not for the adoption of the Federal Act of 1967. The protection of its citizens is clearly a legitimate local concern of the state. The suggestion that uniformity of ingredients for sausage products is in the interest of interstate commerce is unsupported and illogical. Each sausage manufacturer develops its own recipe and compliance with minimum ingredient requirements does not result in uniformity. Sausage manufacturers maintain *their right* to exceed the minimum requirements imposed by federal regulations. How can they in good faith deny the right of the state to impose higher ingredient requirements than those promulgated by the Secretary of Agriculture? If the state requirements are unreasonable or arbitrary, the attack on the state laws would necessarily be based on a claimed 14th Amendment denial of due process or of equal protection. In this case, however, it is clear that Congress did not seek to impose uniform standards, which has been advanced as one of the purposes of the Federal act, but instead has authorized the Secretary of Agriculture to establish requirements for the purposes of identification. Thus, balancing the interstate commerce power against the legitimate local public interest involved in accordance with *Pike* v *Church,* it is clear that the burden imposed by the state should be accommodated as having a minimal effect upon the requirements of interstate commerce. No unconstitutional burden has been placed on respondent's right to engage in interstate commerce.

(b) Congress did not intend to preempt the Michigan Comminuted Meat Law.

A full reading of the Federal act and its historical background makes it crystal clear that there was no intent to inhibit or limit the right of a state to continue its traditional role of prescribing minimum requirements in meat sausage products for the protection of its citizens.

The test in determining whether preemption of state law is intended by Congress is enunciated in *Florida Lime & Avocado Growers, Inc.* v *Paul,* 373 US 132, 10 L ed 2d 248 (1963). That test is: unless Congress unmistakeably ordains preemption in a manner which clearly expresses its desire to supersede state laws, the court will uphold the right of the state to joint enforcement.

A reading of the federal law and its legislative history indicates that Congress could only have intended preemption at the manufacturing end of the stream of commerce leaving the states free to continue regulation at the distribution end.

The federal act was intended to eliminate from meat products filthy, harmful, deleterious, unwholesome and revolting substances that might find their way into the diet of the American people as a result of failure of meat packers to maintain sanitary establishments. It has a subsidiary purpose of informing consumers of the nature of the product by requiring honest labels. Minimal nutritional standards and those seeking to prevent "economic adulteration" are, however, the objects of the Michigan law.

Of particular relevance in the legislative history of the federal law is the section-by-section analysis of Senate Report No. 799 (U.S. Code Congressional and Administrative News, Vol. 2, 1967, pp 2188, 2198). This analysis explains that the section would *clarify* the authority of the Secretary of Agriculture to regulate the making,

labeling, and packaging of articles specified in the bill to prevent the use of false, deceptive, or misleading marks or containers. The analysis notes that "the authority of the Secretary under the Meat Inspection Act to issue regulations prescribing standards of composition or identity is found primarily in this paragraph under two decisions of the U.S. Supreme Court. *Brougham Mfg. Co.* v. *Blanton,* 249 U.S. 495 [39 S. Ct. 363]; *Houston* v. *St. Louis Independent Pkg. Co.,* 249 U.S. 479 [39 S. Ct. 332]."

The two decisions cited in Senate Report No. 799 are revealing. In *Houston* the Secretary of Agriculture, exercising his authority under the Meat Inspection Act, 34 Stat 669, 676, 678, promulgated a regulation which he described as being "for the purpose of preventing the use in interstate or foreign commerce of meat or meat food products under any false or deceptive name." This regulation provided that sausage should not contain cereal in excess of 2% and that, if cereal is added, its presence should be noted on the product or its label. The regulation further prohibited the addition of water or ice to sausage products unless needed for facilitating grinding, chopping, or mixing. Challenging this regulation, a sausage manufacturer contended that, if its product was wholesome and contained no dyes or chemicals, the Secretary would have to approve its product. In rejecting this argument as unsound, the court said:

> "• • • if the word 'sausage' as applied to it is false and deceptive, for plainly the provision of the act requiring the marking of the product must be harmonized with the subsequent provision that no such meat or meat food product shall be sold or offered for sale under any false or deceptive name.
>
> "Whether or not the term 'sausage', when applied

> to the product of the appellee, in which more than the permitted amount of cereal and water is used, is false and deceptive is a question of fact, the determination of which is committed to the decision of the Secretary of Agriculture by the authority given him to make rules and regulations for giving effect to the act, * * *." (p 484)

Of particular importance is the awareness of the court that state laws imposing more stringent requirements for the purpose of protecting public health would have to be met. This awareness appears at page 486 of *Houston* where the president of the sausage company is quoted as saying that when the Secretary's regulation was promulgated he was using two or three per cent to ten per cent cereal, but that he did not use any in Pennsylvania where the use of cereal was entirely prohibited by statute. Compare the use of cereal in *Houston* with the substances sought to be banned by the Michigan statute, viz., lips, udders, ears, eyes, etc., in sausage purveyed in this state!

Similarly, in *Brougham,* the Supreme Court recognized the purpose of the Meat Inspection Act as protecting the public against nondescriptive false inferences used in naming and marketing products. Here a product with the trade name of "Creamo" was held to be false and deceptive under the Meat Inspection Law because the use of cream in the product had been greatly reduced or omitted and replaced with skim milk. While it may be argued that the *Houston* and *Brougham* cases are inapplicable because they were decided prior to enactment of the Wholesome Meat Act in 1967, reference is again made to the legislative history of the Wholesome Meat Act in which Section 6 (21 USC 607) is designated as *clarifying* the authority of the Secretary of Agriculture to regulate the marking, labeling and packaging of articles specified in the bill to

prevent the use of false, deceptive, or misleading marks, labels or containers. In the legislative history, the additional statement is made by the committee that:

> "The authority of the Secretary under the Meat Inspection Act to issue regulations prescribing standards of composition or identity is found primarily in this paragraph under two decisions of the U. S. Supreme Court. *Brougham Mfg. Co.* v. *Blanton*, 249 U.S. 495 [39 S. Ct. 363]; *Houston* v. *St. Louis Independent Pkg. Co.*, 249 U.S. 479 [39 S. Ct. 332]."

See also *Armour and Company* v *Freeman*, CA DC (1962) 304 F 2d 404, in which the Secretary of Agriculture was restrained from enforcing a regulation requiring a meat packer to label his product "imitation ham" because it contained added moisture content up to ten percent of the uncured weight of the product, and *U.S.* v *500 Pounds of Veal and Beef*, (DC Cal, 1970) 319 FS 966, where, although the court recognized that the 1967 amendments to the Meat Inspection Law were intended to broaden powers of the Federal Government in dealing with unwholesome, adulterated or misbranded meat products, it noted the continued viability of *Brougham Mfg. Co.* v *Blanton* and the fact that the 1967 act incorporated the earlier legislation on this subject almost verbatim.

Although, in *Federal Security Administrator* v *Quaker Oats Co.*, 318 US 218 (1943), the court rejected a challenge to a regulation which established the standards of identity for "Farina" and "Enriched Farina," this case is inapplicable because, in the first place, no preemption issue was involved because no state law was being challenged—only a regulation of the federal agency charged with establishing standards of identity and, secondly, the Food, Drug and Cosmetic Act involved in *Quaker Oats* has a significantly

different purpose and history from the Federal Meat Inspection Act. In fact *Quaker Oats* supports the position of the petitioners to the extent that it recognizes the importance of preventing "economic adulteration" by substitution of inferior ingredients.

Conclusion

For these reasons, petitioners pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit, and that same be reversed.

Respectfully submitted,

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Dated: December 6, 1972

APPENDIX

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UNITED STATES OF AMERICA

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

ARMOUR AND COMPANY, a Delaware corporation, WILSON & CO., INC., a Delaware corporation, and GEO. A HORMEL & COMPANY, also a Delaware corporation, Plaintiffs, v. B. DALE BALL, Director of Department of Agriculture of the State of Michigan, and RONALD M. LEACH, Acting Chief of Food Inspection, Division of the Michigan Department of Agriculture, Defendants, FRANK J. KELLEY, Attorney General of the State of Michigan, KENT FRIZZELL, Attorney General of the State of Kansas, and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, Intervening Defendants.	CIVIL ACTION NO. 6250

OPINION

Plaintiffs Armour and Company, Wilson and Co., Inc., and Geo. A. Hormel and Company brought this action against B. Dale Ball, the Director of the Michigan Department of Agriculture, and Ronald M. Leach, Acting Chief of the Food Inspection Division of the Michigan Department of Agriculture. They request the court to enjoin the defendants from enforcing the marketing, labeling, packaging and ingredient provisions of the Michigan Comminuted Meat Law, P.A. 1952, No. 228, M.S.A. §12.964(1) et seq., and further ask the court to declare the Michigan Comminuted Meat law unconstitutional and therefore, unenforceable against the plaintiffs.

The preamble to the Michigan Comminuted Meat Act states that it is an act:

> providing for the protection of the public health and the prevention of fraud and deception by prohibiting the manufacture, sale, the offering for sale or exposing for sale or having in possession with intent to sell, sausage, meat loaf, hamburger, chili con carne, liver sausage, head cheese, sulze, blood sausage, New York (New England) (pressed luncheon), and tongue sausage, that is adulterated or deleterious or not in compliance with this act; defining the mentioned products and other terms used; providing for licensing; regulating labeling and advertising; prescribing penalties for violations of this act; and repealing certain acts and parts of acts.

Thus, the act focuses on the labeling and marketing of processed meats.

The United States Congress has likewise passed an act, the Federal Wholesome Meat Act, 24 USC §601 et seq., regulating the labeling, marketing, inspection and other aspects of the meat industry.

The plaintiffs attack the Michigan Comminuted Meat Act on the basis of the Federal Wholesome Meat Act, claiming that the federal act entirely pre-empts the field of meat labeling and ingredient requirements. Specifically at issue in this case are Michigan's requirements that:

(1) Sausage and similar processed meat products be labeled "Grade I."

(2) All labels of such meat products carry the name of the manufacturer.

(3) Such meat products must contain at least 12% protein.

Central to the dispute in this case is the 12% protein requirement. The regulations promulgated under the Federal Wholesome Meat Act fail to provide for minimum protein content in processed meats such as sausage. The Michigan Act, however, provides "[t]he total percentage of protein shall not be less than 12 percent." M.S.A. §12.964(2).

Furthermore, the Michigan act specifies that, "Grade I sausage shall consist only of skeletal fresh meat . . . of cattle, swine or sheep . . . or the striated muscle of chicken or turkey." Federal regulations, on the other hand, allow the use of hearts, tongues, tripe, lungs, melts, eyes, stomachs, udders, lips, ears, snouts, spleens, esophagus, glands, bladders, and paunches. (See appendix.)

Violation of the Michigan act is made a misdemeanor punishable by a $100.00 fine and/or 90 days in jail. Two

convictions within a 12-month period result in a mandatory hearing before the director of Agriculture to determine whether the offender's license to sell sausage in the state should be revoked.

Plaintiffs call upon this court to enjoin state officials from enforcing the Michigan act and for a declaration of the act's invalidity.

IRREPARABLE INJURY

Standing as a fundamental concept of equity is the rule that an injunction will not issue unless the complaining party demonstrates irreparable injury. Here the plaintiffs seek to enjoin public officials from enforcing an act that imposes criminal sanctions. They assert that they are irreparably injured by the costs of complying with the Michigan act and by the threat to their licenses posed by possible prosecution under the act.

It has long been the general rule in federal courts that:

> "• • • equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. Hygrade Provision Co. v. Sherman, 266 U.S. 497, 500. See also Re Sawyer, 124 U.S. 200, 209-211; Davis & F. Mfg. Co. v. Los Angeles, 189 U.S. 207, 217. To justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights. See Terrace v. Thompson, 263 U.S. 197, 214; Packard v. Banton, 264 U.S. 140, 143; Tyson v. Banton, 273 U.S. 418, 428; Cline v. Frink Dairy Co., 274 U.S. 445, 452; Ex parte Young, 209 U.S. 123, 161-162. *We have said that it must appear that 'the danger of irreparable loss is*

> ***both great and immediate;' otherwise, the accused should first set up his defense in the state court, even though the validity of a statute is challenged.*** * * *."
>
> Spielman Motor Co. v. Dodge, 295 U.S. 89, 95 (1935). (Emphasis supplied.)

In the Spielman case, Spielman Motor Company brought its action to restrain a threatened prosecution under the New York "Code of Fair Competition for the Motor Vehicle Retailing Trade." In holding that the plaintiff failed to demonstrate "irreparable damage" the court stated:

> The bill alleged that appellant had a large business in buying and selling motor vehicles, but the statute did not prohibit the continuance of that business and the bill gave no facts to show that the particular requirements of the code, which were in question, would create such a serious interference as to require equitable relief. Aside from the statement of general and unsupported conclusions, the case presented by the bill was the ordinary one of a criminal prosecution which would afford appropriate opportunity for the assertion of appellant's rights.
>
> 295 U.S. at 96.

Like the plaintiff in Spielman, the plaintiffs in this action fail to allege "such serious interference as to require equitable relief." The plaintiffs in this case are threatened with criminal proceedings. They do not require, however, the protection of a Federal Court of equity to preserve their statutory and constitutional rights. Clearly the state court may be relied upon to preserve these rights.

The Supreme Court's most recent holding on the abstention doctrine relied heavily on the notion of irreparable

injury. In Younger v. Harris, 401 U.S. 37 (1971), the court reversed the District Court which had enjoined public officials from enforcing the California Criminal Syndicalism Act. The plaintiff in the Younger case was actually being prosecuted at the time he sued in Federal Court and the Supreme Court expressly stated that it made no judgment concerning abstention where criminal proceedings had not yet begun. This court likewise declines to make any statement concerning abstention where state criminal prosecutions are not yet begun.

Central to the court's holding in favor of abstention, however, was the concept of irreparable injury. The court's holding in Younger rested partly on the notion of comity with state courts and partly on the equitable concept of irreparable injury. 401 U.S. at 43-44. This concept is not limited to the abstention doctrine but applies in all cases wherein equitable relief is sought.

The Supreme Court concluded that Harris, who was being prosecuted under a statute later held unconstitutional by the District Court, failed to demonstrate irreparable injury. Thus, the court stated:

> In *Fenner* v. *Boykin*, 271 U. S. 240 (1926), suit had been brought in the Federal District Court seeking to enjoin state prosecutions under a recently enacted state law that allegedly interfered with the free flow of interstate commerce. The Court, in a unanimous opinion made clear that such a suit, *even with respect to state criminal proceedings not yet formally instituted, could be proper only under very special circumstances:*
>
> > *"Ex parte Young*, 209 U. S. 123, and following cases have established the doctrine that when absolutely necessary for protection of constitutional

rights courts of the United States have power enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances *where the danger of irreparable loss is both great and immediate.* Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done. *The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection.*" *Id.*, at 243-244.

These principles, made clear in the Fenner case, have been repeatedly followed and reaffirmed in other cases involving threatened prosecutions. See, *e. g., Spielman Motor Sales Co. v. Dodge,* 295 U. S. 89 (1935); *Beal v. Missouri Pac. R. Co.,* 312 U. S. 45 (1941); *Watson* v. *Buck,* 313 U. S. 387 (1941); *Williams* v. *Miller,* 317 U. S. 599 (1942); *Douglas* v. *City of Jeannette,* 319 U. S. 157 (1943).

401 U.S. at 45-46. (Emphasis supplied.)

The court also stressed Watson v. Buck, 313 U. S. 387 (1941, where the court said:

"Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, *even if such statutes are unconstitutional.* 'No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution

even though alleged to be unauthorized and *hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid.' Beal* v. *Missouri Pacific Railroad Corp.*, 312 U. S. 45, 49."

401 U.S. at 46. (Emphasis supplied.)

Like the case presently before the court, the Fenner, Buck and the Spielman cases all relied on in Younger, were cases brought to challenge regulatory statutes. The import of these cases is clear; one is not irreparably injured because he must raise his challenge to the state statute as a defense to a state prosecution.

The court in Younger explained what would be regarded as irreparable injury. If the plaintiff is unable to protect his federal rights by defending a state prosecution he is irreparably injured. Thus, the court stated:

In all of these cases the Court stressed the importance of showing irreparable injury, the traditional prerequisite to obtaining an injunction.

• • •

Certain types of injury, in particular, the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution, could not by themselves be considered "irreparable" in the special legal sense of that term. Instead, the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution.

401 U.S. at 46. (Emphasis supplied.)

Plaintiffs in this case may adequately protect their federal rights in a defense to a state prosecution. Plaintiffs

feel that the Federal Wholesome Meat Act gives them the right to disregard the Michigan law. In Younger the plaintiff felt the Federal Constitution gave him the right to disregard the California Criminal Syndicalism Act. In fact, the plaintiff in Younger relied upon the *"favored" right of freedom of speech.*

The Supreme Court has long asserted the "firstness of the First Amendment."[1] But the court held that whatever the merits of a given claim, a court of equity will enjoin enforcement of a state statute only where there is irreparable injury. And, as pointed out above, one is not irreparably injured so long as he may protect his federal rights in a state criminal proceeding. The court notes that the plaintiff in Younger was a person, a human being, and could suffer the substantial loss of personal liberty. Plaintiffs here, on the other hand, are artificial beings which face only the remote potential of losing their right to do business.

The plaintiffs allege irreparable injury in the threat the Michigan statute poses to their licenses. The statute provides for a mandatory hearing to consider the revocation of an offender's license only when a single offender is twice convicted within a single twelve-month period. Obviously plaintiffs have the opportunity to raise the issue presented here before the state court without endangering their licenses. A single "test" case should resolve the issue.

Plaintiffs also allege injury in the additional cost of compliance with the Michigan act. They claim additional costs of "$4.50 per hundred weight." The plaintiffs make no allegation, however, that such additional *cost* results in

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[1] See E. Cahn, Confronting Injustice, 86-104 (1966).

financial *loss*. All sausage sold in the State of Michigan must comply with the Michigan law and there is no reason to believe that most, if not all, of the higher cost is not passed on to the consumer. At the most the record hints at a loss expectancy. Possible impediments to the maximization of profits is not a compelling justification for equitable relief.

An even more basic question, however, is whether the cost of compliance with this regulation may ever be considered "loss" or "injury." The plaintiffs in this case have operated under, and complied with, the provisions of the Michigan act since 1952. Now the plaintiffs claim that, by reason of federal law, they may be able to do less and are, therefore, irreparably injured by a law they have complied with, without question, for years. Suddenly the provisions of the Michigan act irreparably injure them. They seek the aid of a court of equity and good conscience to remove the impediment of the higher Michigan quality standards to maximize their profits.

If the cost of complying with a regulation amounts to irreparable injury then practically every state regulation may be challenged in Federal Court before the imposition of state criminal proceedings. Nearly all regulations impose cost burdens on the industries regulated. This cost of compliance may not be regarded as irreparable injury where no other factor is presented.

If the regulations were used for harrassment or otherwise misused there may be grounds for equitable relief. Cf. Oswald Co. v. Leader, 20 F. Supp. 876 (1937). Irreparable injury would likewise result if the plaintiffs were forced out of the market while testing their contention in defense of a state prosecution. Toomer v. Witsell, 344 U. S. 385 (1948).

Unlike plaintiffs in Toomer, however, the plaintiffs here are vast corporate entities not subject to imprisonment, and able to defend a state prosecution without forfeiting their market. Plaintiffs are not irreparably injured by this added cost because they may avoid it by simply disregarding the state statute. In reality plaintiffs invoke the equity jurisdiction of a federal court out of apprehension of losing a state prosecution. This is exactly what Younger v. Harris, supra, held not to be irreparable injury. Like the petitioner in Younger plaintiffs here cannot call their anxiety over possible loss in the state court such irreparable injury as to entitle them to federal equitable relief. Thus, plaintiffs' request for injunctive relief must be denied.

DECLARATORY RELIEF

The plaintiffs herein also request a declaratory judgment. Generally, the same considerations that require the withholding of injunctive relief will make declaratory relief equally inappropriate. Great Lakes Co. v. Huffman, 319 U.S. 293 (1943); Samuels v. Mackell, 401 U.S. 66 (1971).

In Great Lakes Co. v. Huffman, the court said:

> "In our order granting the writ, we requested counsel 'to discuss in their briefs and on oral argument the question whether the declaratory judgment procedure can be appropriately used in this case where the complaint seeks a judgment against a state officer to prevent enforcement of a state statute.'" 319 U.S. at 296.

The court concluded that the District Court had improperly considered the plaintiffs' complaint on the merits. The complaint should have been dismissed on traditional equitable grounds.

> The jurisdiction of the district court in the present suit, praying an adjudication of rights in anticipation of their threatened infringement, is analogous to the equity jurisdiction in suite quia timet or for a decree quieting title. See Nashville, C. & St. L. R. Co. v. Wallace, 288 U.S. 249, 263, 77 L ed 730, 53, S Ct 345, 87 ALR 1191. Called upon to adjudicate what is essentially an equitable cause of action, the district court was as free as in any other suit in equity to grant or withhold the relief prayed, upon equitable grounds. The Declaratory Judgments Act was not devised to deprive courts of their equity powers or of their freedom to withhold relief upon established equitable principles. It only provided a new form of procedure for the adjudication of rights in conformity to those principles.
>
> 319 U.S. at 300.

Thus, relief under the Declaratory Judgments Act is equitable relief and is subject to the generally established rules of equity. A district court is "as free as in any other suit in equity to grant or withhold the relief prayed, upon equitable grounds." 319 U.S. at 300.

Ordinarily, the practical effect of declaratory relief will be identical to that of injunctive relief. Samuels v. Mackell, 401 U.S. 66, at 73. Those reasons which compel this court to deny injunctive relief likewise require denial of plaintiffs' request for declaratory relief. For the reasons heretofore stated the plaintiffs' request is denied.

Although this court has found that it may not exercise its equity jurisdiction due to the lack of irreparable injury, it cannot help but note the plaintiffs' posture in this case. Plaintiffs have stipulated that the standards established

under the Federal Wholesome Meat Act are minimum standards, not maximums. Compliance with the Michigan act *is* compliance with the Federal Act. Plaintiffs Armour and Co., Wilson & Co., and Geo. A. Hormel & Company demand the right to do no more than the minimum required by the Federal Act. They seek to avoid the admittedly higher standards of the Michigan act, while offering as their sole reason the maximization of corporate profits. No law *requires* that plaintiffs lower their standards. The decision to do so is that of the plaintiffs and no one else.

Plaintiffs' counsel admitted on oral argument that such a lowering of standards is inequitable but argues that to the extent that Congress has acted inequitably the plaintiffs have the right to pursue it. The court certainly recognizes that it may not review the equities of the Congressional action relevant to this case. But it likewise recognizes the lack of equity in the plaintiffs. If Congress has acted inequitably the plaintiffs intend to take full advantage of it. The court notes that while the plaintiffs argue that the Federal Act operates to lower the Michigan standards, a major intent and purpose of the Federal Act was to raise the practically non-existent standards of many other states. The Federal Act was needed to force meat packing companies to meet their obligations to the consumers. Congress felt that meat packing companies were unwilling to voluntarily act in the public interest and thus passed a law forcing them to meet their public obligations. It is indeed unfortunate that the plaintiffs' fervor for profits make them the prisoner of inequity.

It is an historical certainty that one who seeks equity must as a prerequisite have equity and good conscience. Plaintiffs have neither in this case.

For the reasons stated in this opinion, plaintiffs' motion for summary judgment is hereby denied, and defendants' motion for summary judgment is hereby granted.

IT IS SO ORDERED.

NOEL P. FOX
Chief District Judge

Dated: November 12, 1971.

No. 72-1016

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Armour and Company, a Delaware corporation, Wilson & Co., Inc., a Delaware corporation, and Geo. A. Hormel & Company, a Delaware corporation, *Plaintiffs-Appellants,* v. B. Dale Ball, Director of the Department of Agriculture of the State of Michigan, and Ronald M. Leach, Acting Chief of the Food Inspection Division of the Michigan Department of Agriculture, *Defendants-Appellees,* Frank J. Kelley, Attorney General of the State of Michigan, *Intervening Defendant-Appellee.*	Appeal from the United States District Court for the Western District of Michigan, Southern Division.

Decided and Filed October 13, 1972.

Before: Phillips, Chief Judge, Weick, Circuit Judge, and Thomas,* District Judge.

*Hon. William K. Thomas, Judge of the United States District Court, Northern District of Ohio sitting by designation.

Thomas, District Judge: Appellants, Armour and Company, Wilson & Co., Inc., and Geo. A. Hormel & Company, all Delaware corporations, manufacture a variety of sausage and other meat products. They join in an action for declaratory judgment and injunctive relief alleging a conflict of the Federal Wholesome Meat Act (Federal Meat Inspection Act of 1907, as amended), 21 U.S.C. § 601, *et seq.* (1967) with the Michigan Comminuted Meat Law (M.S.A. 12.964(1) *et. seq.*) (1952). The two laws will sometimes be designated the Federal Act and the Michigan Law. Appellees are the Director of the Department of Agriculture of the State of Michigan and the Acting Chief of the Food Inspection Division of the Michigan Department of Agriculture. The Attorney General of the State of Michigan is an intervening defendant.

The cause was submitted to the trial court of the complaint, answer, affidavits of officers of Armour and Hormel, a short stipulation, briefs, and oral argument. The trial court denied appellants' motion for summary judgment and granted the motion for summary judgment of the appellees. The meat manufacturers appeal.

In their complaint appellants requested a declaration that "the marking, labeling, packaging, and ingredient provisions" of the Michigan Law are "in addition to, or different than"[1] those imposed under the Federal Act and the regulations issued pursuant thereto and are, therefore, preempted by virtue of 21 U.S.C. § 678 (1967) and Article VI, Clause 2 of the United States Constitution. Appellants also requested the trial court to enjoin appellees from en-

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[1]

As here pertinent Section 408 of Title IV of the Wholesome Meat Act (21 U.S.C. § 678) provides "Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State . . . ."

forcing the provisions of the Michigan Law against them as to "sausage manufactured or processed by plaintiffs which has passed federal inspection."

It is alleged in the complaint and appellees do not deny, that

> Since December 15, 1967, the effective date . . . of Subchapter I of the Wholesome Meat Act, plaintiffs have prepared all of their sausage, transported and offered for sale in Michigan, at federally inspected establishments in accordance with the requirements of said Act, and of the regulations adopted pursuant thereto; . . . the Secretary of Agriculture has made or caused . . . inspections . . . to be made from time to time by experts of the U.S. Department of Agriculture, both as to raw materials . . . and the finished products, as well as to the factories or plants where such sausage is manufactured, packed or prepared for market.
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> . . .
>
> [I]n June of 1968, a shipment into Michigan of Armour and Company's sausage, which had passed federal inspection, was cited by the Food Inspection Division of that state as not complying with the Michigan . . . Law because of a protein content of less than twelve percent and, as a result, the criminal penalties of Section 10 . . . were invoked against said plaintiff; and that defendants . . . have indicated that they intend to continue . . . [such] . . . policy . . . .

The 1968 prosecution ended with a plea of guilty and a fine. Subsequent to the filing of appellants' complaint on January 13, 1970, prosecutions under the Michigan Law had been commenced by appellees against Armour Dial, Inc., a

subsidiary of Armour and Company, and Armour and Company. Both prosecutions are held in abeyance pending the outcome of this case.

I.

In his opinion and order of November 12, 1971, the trial court noted:

> The plaintiffs attack the Michigan Comminuted Meat Act on the basis of the Federal Wholesome Meat Act, claiming that the federal act entirely preempts the field of meat labeling and ingredient requirements.

Without specifically responding to plaintiffs' claim of preemption the trial court stated:

> Plaintiffs . . . may adequately protect their federal rights in a defense to a state prosecution.

Concluding that appellants failed to prove irreparable injury and that they lacked equity or good conscience, the trial court denied appellants' request for injunctive relief. The court ruled further that "reasons which compel this court to deny injunctive relief likewise require denial of plaintiffs' request for declaratory relief." In support of this ruling the court stated:

> Generally, the same consideration that require the withholding of injunctive relief will make declaratory relief equally inappropriate. *Great Lakes Co.* v. *Huffman,* 319 U.S. 293 (1943); *Samuels* v. *Mackell,* 401 U.S. 66 (1971).

Samuels v. *Mackell,* on which the trial court principally relies, is the second in the trilogy of decisions headed by

Younger v. *Harris*, 401 U.S. 37 (1971), and followed by *Perez* v. *Ledesma*, 401 U.S. 82 (1971). These decisions limit a district court's right to issue federal injunctions against enforcement of state criminal statutes. *Samuels, supra*, applies the *Younger* doctrine to a declaratory action.

> [T]he same equitable principles relevant to the propriety of an injunction must be taken into consideration by federal district courts in determining whether to issue a declaratory judgment, and that where an injunction would be impermissible under these principles, declaratory relief should ordinarily be denied as well. 401 U.S. 73.

Lake Carriers' Assn. v. *MacMullan*, 40 U.S.L.W. 4569 (U.S. May 30, 1972) whose aid and guidance was not available to the trial court, confirms this limitation of *Younger* and *Samuels*.

> [*Younger* v. *Harris* and *Samuels* v. *Mackell*] were premised on considerations of equity practice and comity in our federal system that have little force in the absence of a pending state proceeding. In that circumstance exercise of federal court jurisdiction ordinarily is appropriate if the conditions for declaratory or injunctive relief are met. See generally *Perez* v. *Ledesma*, 401 U.S. 82, 93 (1971) (separate opinion). *Lake Carriers'* at 4573.

Reasonably read, "a pending state proceeding" means a proceeding under state law that is pending when a complaint is filed in federal court seeking declaratory or injunctive relief from the application of that state law. *Samuels*, therefore, does not forbid declaratory relief in the present case. No state prosecution under the Michigan Law was pending against the appellants when they filed their present action.

Lake Carriers' Assn., supra, prescribes the conditions under which a justiciable controversy is presented when a declaratory action is brought to challenge a state law and no criminal prosecution pends thereunder. The Court observes at U.S.L.W. 4572 that since the appellants were obliged under the Michigan Watercraft Pollution Act of 1970 to install sewage storage devices this obligation "in and of itself makes their attack on the validity of the law a live controversy, and not an attempt to obtain an advisory opinion." The Court recognizes

> [I]f the appellants are to avoid prosecution, they must be prepared, according to Michigan authorities, to retain all sewage on board as soon as pump-out facilities are available, which, in turn, means that they must promptly install sewage storage devices. In this circumstance, compliance is coerced by the threat of enforcement, and the controversy is both immediate and real. [Citations] U.S.L.W. at 4572.

In the present case the immediacy and reality of the controversy is plain. Enforcement of the Michigan Law against the appellants is not just a threat. Repetitive enforcement of the law's criminal sanctions is occurring and its continuing enforcement is promised. Applying the test of *Lake Carriers' Assn.* to these circumstances "compliance is coerced by . . . enforcement" and the attack of the meat manufacturers on the validity of the Michigan Law is "a live controversy." Whether or not the Michigan Law is preempted by the Federal Wholesome Meat Act therefore presents a justiciable controversy that is matured. It requires resolution.

It is concluded, therefore, that the trial court erred in its determination of the inappropriateness of declaratory relief and in refraining from ruling on the appellants' claim

of preemption. Because it is concluded that the issue is one of law and prompt adjudication would serve the interest of justice, the Court will proceed to a determination on the merits.

II.

The Michigan Comminuted Meat Law governs the sale of "meat that has been subjected to a process whereby it has been reduced to minute meat particles." Sausage, by definition, is a comminuted meat and any sausage "which does not meet the specifications of Grade 1 sausage" is not permitted to be sold in Michigan. Similarly, the Michigan Law contains specific provisions governing the marking and labeling of sausage. Meat manufacturers or packers must be licensed; and criminal penalties are provided for violations of the law.

The Federal Act and the regulations issued pursuant thereto are applicable, *inter alia,* to meats and meat food products prepared for shipment in "commerce." Sausage, by definition, is a meat food product for which federal regulations provide marking, labeling, and ingredient requirements. The only meat food product involved in this case is sausage; and the claimed conflicts between the Michigan Law and the federal regulations regarding marking, labeling, and ingredient requirements (specifications) constitute the subject matter of this action.[2]

All of appellants' sausage products shipped into Michigan are subject to federal inspection under Subchapter I of the Federal Act. Subchapter I, among its provisions, incorporates the inspection and labeling provisions of the

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[2]

Packaging requirements of the Federal regulations are not an issue in this case.

Federal Meat Inspection Act of 1907, 21 U.S.C. § 601, *et seq.* The subchapters of the Wholesome Meat Act strengthen but also expand the Meat Inspection Act.

Under Subchapter I, 21 U.S.C. § 601(n)(7) a meat food product is misbranded

> if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Secretary under section 607 of this title unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standard . . . .

Title 21 U.S.C. §607 provides:

> The Secretary, whenever he determines such action is necessary for the protection of the public, may prescribe . . . (2) definitions and standards of identity or composition for articles subject to this subchapter [Subchapter I] . . . .

The regulations promulgated by the Secretary must be "necessary for the protection of the public." The Secretary is further governed by one of the congressional findings that

> It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. 21 U.S.C. § 602.

Guided by this legislative policy the Secretary is authorized to prescribe standards of identity or composition for

sausage, and such sausage is misbranded unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard.

In *Federal Security Administrator* v. *Quaker Oats Co.*, 318 U.S. 218, 221-222 (1943), the Supreme Court upheld a regulation of the Administrator which established a "definition and standard of identity" for farina. Significantly, the Federal Food, Drug, and Cosmetic Act provided that any food which

> purports to be or is represented as a food for which a definition and standard of identity has been prescribed . . . in . . . misbranded unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard . . . .

Those provisions are, in substance and intent, the same as the provisions enacted in the Federal Wholesome Meat Act. The language is nearly identical.

Moreover, 21 U.S.C. § 607(c) states "definitions and standards of identity or composition for articles subject to this subchapter . . . not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act . . . ." By directly referring to that Act, it is concluded that Congress intended to give to the phrase "definitions and standards of identity or composition" a meaning as broad as that given to the phrase "definition and standard of identity" as construed in *Quaker Oats, supra.* Moreover, Congress has added to the phrase "definition and standard of identity" the words "or composition." Giving ordinary meaning to the word "composition," it means the resulting product of mixing or combining various elements or ingredients. With this con-

struction, the statute gives the Secretary the authority to prescribe "definitions and standards of *composition*" for meat food products. (Emphasis supplied.)

What the Supreme Court said in *Quaker Oats, supra* 230 of those provisions in the Federal Food, Drug and Cosmetic Act is equally applicable to the like provisions in the Wholesome Meat Act.

> But it was found that such a prohibition [false and misleading labeling] was inadequate to protect the consumer from "economic adulteration," by which less expensive ingredients were substituted, or the proportion of more expensive ingredients diminished, so as to make the product, although not in itself deleterious, inferior to that which the consumer expected to receive when purchasing a product with the name under which it was sold . . . . The remedy chosen was not a requirement of informative labeling. Rather it was the purpose to authorize the Administrator to promulgate definitions and standards of identity "under which the integrity of food products can be effectively maintained" . . . .

Thus, it is concluded that one purpose of the Wholesome Meat Act is to empower the Secretary to adopt definitions and standards of identity or composition so that the "integrity" of meat food products could be "effectively maintained." Indeed, Congress in a further finding declares that,

> Unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat food products in interstate or foreign commerce . . . . (21 U.S.C. § 602.)

The remedy chosen is not merely to prevent false and misleading labeling but to set standards under which the integrity of meat food products would be assured. Under the statutory scheme then, it is essential that the Secretary establish standards of identity or composition. Without such standards it would be impossible to carry out the express congressional policy.

As a further part of the statutory scheme the authority delegated to the Secretary to prescribe "definitions and standards of identity or composition" for meat food products includes the authority to prescribe their "ingredients." Prescribing the "ingredients" is essential to determine the "identity" of the finished product and to protect the consumer from "economic adulteration." Moreover, in defining and standardizing the composition (ingredients) of the product the Secretary of necessity must regulate the product's nutritional value.

It is concluded further that the phrase "definitions and standards of identity or composition" is the functional equivalent of the term "ingredient requirements" contained in 21 U.S.C. § 678. (See n.1 *infra.*)

It is stipulated that the Federal Act and the Michigan Law "have a common purpose of protecting public health." However, the definitions and standards of identity or composition (ingredient requirements) established by the Secretary[3] conflict in many material instances with the "specifications" (ingredient requirements) for Grade 1 sausage provided in the Michigan Law. While those con-

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[3]

Regulations promulgated by the Secretary, effective December 1, 1970, 35 Fed. Reg. 15,552, 9 C.F.R. 301, *et seq.* revise earlier regulations in effect when appellants filed their complaint on January 13, 1970.

flicts are detailed in the Appendix, the major conflicts, in summary form, are now discussed.

Grade 1 sausages, to be legally saleable in Michigan, must consist only of striated muscle, including head and cheek meat (basically, skeletal meats) derived only from the carcass of any cattle, swine, or sheep, or a mixture of such meats. Sausage, as defined by the regulations, may be prepared from *any part* of cattle, sheep, swine, or goats capable of use as human food. Thus, sausage under the regulations may contain meat other than skeletal meat and may also contain goat meat.

The regulations permit up to 15% of poultry meats or poultry products in "Cooked, Smoked Sausage," whereas under the Michigan Law neither ingredient is permissible in Grade 1 sausage. Likewise, under the regulations beef and/or pork fatty tissue not exceeding 15% are permitted ingredients in "Cooked, Smoked Sausage" but neither is permitted under the Michigan Law. Cereal and soya binders or extenders and certain "milk" additives permitted under the regulations are excluded ingredients under the Michigan Law. However, the "milk" additives permitted under the Michigan Law may amount to 4% of the total ingredients, while under the regulations "milk" additives may not exceed 3.5%. Additionally, the "trimmable fat" content of specified sausages differs. (See Appendix.)

Finally, under the Michigan Law a "protein content" of 12% is required while under the regulations no percentage of protein content is specified. In effect, however, a "protein content" of 11.2% is required. (See Appendix.)

An item-by-item comparison discloses that nearly all provisions in the Michigan Law conflict with the corres-

ponding provisions in the Secretary's regulations. This conflict presents the preemption issue.

Appellees attempt to avoid preemption by earnestly arguing "since Congress enacted only minimum standards, the states were free to enact higher standards."

Entered only for the purpose of plaintiffs' motion, the parties stipulated:

> The minimum nutritional requirements of the Michigan . . . Law are higher than the minimum nutritional requirements of the Federal Wholesome Meat Act.

The trial court misinterpreted this stipulation when he found

> Plaintiffs have stipulated that the standards established under the Federal Wholesome Meat Act are minimum standards, not maximum.

The outer limits of the stipulation were set in a colloquy between court and counsel during oral argument. When the court asked counsel whether it was "equitable . . . that the people . . . of Michigan should have the quality of their meat reduced . . ." counsel answered,

> Now, if you want to get into that question, I think we should take proof on it.

Counsel supplemented this by adding,

> . . . if there is a question aside from higher nutritional requirements . . . rather than have the court come to certain conclusions with respect to whether this is good or whether that is bad, that is a matter of scientific

> proof, and if the Court is going to consider that aspect of it, we would like the opportunity to present proof on that.

Thus, appellants did not stipulate that the "quality" or "wholesomeness" of their sausage was inferior. They merely stipulated that the Michigan nutritional requirements, presumably the protein requirement, was higher than under the Federal Act. They isolated that fact so the court could determine whether this and other conflicting Michigan provisions were preempted by the Federal Act.

Not as to other conflicts where the Federal regulations are more demanding, but as to Michigan's requirement of 12% protein content the trial court was correct when he stated "compliance with the Michigan Act is compliance with the Federal Act." Moreover, were there no other ingredient requirement in the regulations compliance with the Michigan 12% requirement would obviously comply with the 11.2% resulting federal requirement. However, the Secretary, by prescribing maximum percentages of other ingredients in sausage has, in effect, established that the percentage of protein may be less than 12% (actually 11.2%). The only way to achieve Michigan's 12% protein requirement is to diminish the permissible percentages of other ingredients. To do so, however, would allow Michigan or any other state to interfere with the permissible percentage of ingredients which the Secretary, under the Federal Act, is entitled to prescribe. That is the very situation which Congress sought to prevent.

The Michigan protein requirement may be from the consumer's point of view a beneficial and wholesome requirement. Nevertheless, in *Quaker Oats, supra,* 232 the Supreme Court expressly ruled that a federal regulation may exclude an ingredient from a food product even though beneficial and wholesome.

> We must reject at the outset the argument earnestly pressed upon us that the statute does not contemplate a regulation excluding a wholesome and beneficial ingredient from the definition and standard of identity of a food. The statutory purpose to fix a definition of identity of an article of food sold under its common or usual name would be defeated if producers [states] were free to add ingredients, however, wholesome, which are not within the definition.

Hence, the protein content implied in the regulations is valid and enforceable even though it has the effect of reducing an ingredient requirement that may result in higher nutritional value for a meat food product. It is equally true that the congressional purpose to standardize identity and composition of meat food products would be defeated if states were free to require ingredients, however wholesome, which are not within the Secretary's standards.

The Federal Act itself manifests a congressional intent to prescribe uniform standards of identity and composition. This intent is expressed in 21 U.S.C. § 601(n)(7) which defines as misbranded a meat food product in "commerce" which does not conform to the Secretary's standards of identity or composition. If the meat food product does not conform with the regulations then it is misbranded irrespective of where in "commerce" it may be transported. Thus, appellee's contention "that Congress did not intend to establish uniform national standards of identity for meat food products" is refuted by the express language of the Act itself.

III.

The keystone conclusion of the trial court that the Federal Act establishes only minimum requirements will now

be tested by determining whether 21 U.S.C. § 678 is preemptive.

Thus, the ultimate issue is whether the marking, labeling, and ingredient provisions of the Michigan Law are in addition to, or different than the Secretary's regulations governing sausage and, whether the provisions of the Michigan Law can be enforced against meat food products (sausage) prepared by appellants for shipment in "commerce" and their consequent sale in Michigan.

In considering the application of the Supremacy Clause, *Florida Lime & Avocado Growers, Inc.* v. *Paul, Dir. Dept. of Agriculture of Calif.*, 373 U.S. 132, 142 (1963), specifies two preemption tests:

> The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained. See, *e.g., Huron Portland Cement Co.* v. *Detroit,* [362 U.S. 440 (1960)].

The federal regulations concerning sausage cannot be separately tested against each corresponding ingredient requirement of the Michigan Law that fixes a higher standard. The Secretary's definitions and standards of identity or composition relate to finished products and are unitary. Each ingredient requirement is dependent upon the other requirements. The interdependent nature of these uniform national standards precludes applying the first preemption test. The second test of preemption does apply to these higher Michigan ingredient requirements. In 21 U.S.C. § 678 "Congress has unmistakably so ordained" federal

regulation of a field of commerce. That section's preemptive language provides:

> Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State . . . with respect to articles prepared at any establishment under inspection in accordance with the requirements under sub-chapter I of this chapter . . . .

It is apparent that this language does not designate that the federal standards prescribed by the Secretary in fixing ingredient requirements shall only be minimum standards. On the contrary, under the clear wording of Section 678 "marking, labeling . . . or ingredient requirements" imposed by a state would be "in addition to, or different than [those made by the Secretary]" whether the state "marking, labeling . . . or ingredient requirements" are lower or higher than the corresponding requirements made by the Secretary under the Federal Act, Thus, by prohibiting a state's imposition of "marking, labeling . . . or ingredient requirements" which are "in addition to, or different than [those made by the Secretary]," Congress has "unmistakably . . . ordained" that the Federal Act fixes the sole standards. The Michigan Law's specifications of Grade 1 sausage are preempted by the federal regulations because they prescribe standards that are "in addition to, or different than, those made" by the Secretary under the regulations pertaining to sausage.

The remaining language of Section 678 corroborates that Congress has unmistakably ordained that "marking, labeling . . . or ingredient requirements" prescribed by the Secretary completely preempt this field of commerce. After banning a state's imposition of additional or different "requirements," Section 678 continues:

> [B]ut any State . . . may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment . . . .

The concurrent action of a state, permitted by this language, only applies to adulterated or misbranded articles. These words are necessarily used as defined in the Act. Under U.S.C. § 601(n)(7) a meat food product is misbranded

> if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Secretary under section 607 of this title unless (A) it conforms to such definition and standard . . . .

Permissible concurrent enforcement by a state under Section 678 would apply only to meat food products that satisfy this definition of misbranding. In its concurrent enforcement a state would not be permitted to prevent the distribution in commerce of any article that "conforms" to the "definition and standard of identity or composition." Thus, Congress is ordaining uniform national ingredient requirements prescribed by the Secretary.

The last sentence of Section 678 adds further corroboration.

> This chapter shall not preclude any State . . . from making requirement or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter.

By permitting state action "with respect to any other matters regulated under this chapter," Congress is unmistakably ordaining that a state may not take action with reference to "marking, labeling . . . or ingredient requirements in addition to, or different than, those made under this chapter . . . ." State requirements must be "consistent" with the Federal Act.

Congressional debates are devoid of any discussion of Section 408 of the Act (21 U.S.C. § 678). However, in view of its unambiguous language, Section 408 reflects unequivocal legislative purpose to make the Federal Act preemptive.

This assessment of congressional intent is reinforced by later congressional action in amending the Poultry Products Inspection Act, 21 U.S.C. § 467e (1968). The amendment added the precise preemptive language of Section 678 of the Federal Wholesome Meat Act. It is significant that this occurred after the Second Circuit in *Swift & Co.* v. *Wickham,* 364 F.2d 241 (2 Cir. 1966), *cert. den.* 385 U.S. 1036 (1967), held that the Poultry Products Inspection Act did not preclude the State of New York from imposing labeling requirements for turkey in addition to and different than those requirements by the Federal Act. Compare, *Meat Trade Industries, Inc.* v. *McLaughlin, Comm'r.,* 326 N.Y.S. 2d 683 (App. Div. 1971), 37 A.D. 2d 456.

By the second preemption test of *Florida Avocado Growers, supra* the Michigan labeling requirements are preempted. Indeed, even under the first preemption test the labeling requirements are preempted; and the State of Michigan so concedes. Since the federal regulations make no provision for Grade 1 sausage, or for labeling sausage Grade 1, it is manifest that "the nature of the [federally] regulated subject matter permits no other conclusion."

The congressional history preceding the passage of the Federal Act discloses that these debates principally involved Subchapter III, federal-state cooperation, a pioneer program instituted by the Act. There is a clear expression of congressional intent to limit federal action under Subchapter III (21 U.S.C. § 661, *et seq.)* to situations in which a state has failed to develop or is not enforcing" requirements at least equal to those imposed under subchapters I and IV of this chapter." This limitation applies only to Subchapter III.

Moreover, congressional debates also make clear that if conditions warrant the Secretary may exercise authority under Subchapter III over the slaughter of animals that are prepared for use as human food solely for distribution within the state. Otherwise, the authority of the Secretary under the Act extends only to the described activities that are "in commerce." Hence, under Subchapter III the State of Michigan may continue to enforce the Michigan Law as to meat food products prepared in Michigan solely for distribution in the State as long as its law and its enforcement imposes requirements at least equal to those imposed under Subchapters I and IV of the Federal Act.

Michigan's desire to preserve from preemption its Comminuted Meat Law, a law that has protected consumers since its enactment in 1952, is understandable. Nevertheless, in view of the clear and complete preemption ordained by Congress, this Court must enforce the Supremacy Clause and declare that the Federal Act preempts certain provisions of the Michigan Law. It is determined and declared that as to the transportation and sale "in commerce" of meat food products described in regulations, 9 C.F.R. §§ 319.140; 319.141; 319.142; 319.143; 319.144; 319.180; and 319.181 the marking, labeling, and ingredient requirements of the federal regulations preempt the following provisions

of the Michigan Law: Section 12.964(2) Sec. 2(a)(1), except for the last two sentences (added by amendment in 1968); Sec. 2(a)(2); Section 12.964(3); Section 12.964(4); Section 12.964(5); Section 12.964(7); Section 12.964(8); and Section 12.964(10).

The judgment of the District Court is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

APPENDIX

1. M.S.A. § 12.964(2)(a) provides that "Grade 1 sausage shall consist only of skeletal fresh meat prepared from the animal carcass of cattle, swine or sheep or a mixture of such meats, or the striated muscle of chicken or turkey . . . ."

2. Skeletal meat is defined as "any clean edible part of striated muscle including head meat and cheek meat." M.S.A. § 12.964(1)(i). Meat is defined as "the properly dressed, clean and sound flesh derived from cattle, swine or sheep . . . ." M.S.A. § 12.964(1)(h). A carcass is "the commercially prepared or dressed body of any cattle, sheep or swine." M.S.A. § 12.964(1)(g).

3. A meat food product is "any article capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats . . . ." 9 C.F.R. § 301.2(vv). Carcass is defined as "all parts, including viscera, of any slaughtered livestock." 9 C.F.R. § 301.2(ss). However, 9 C.F.R. § 318.6 prohibits as ingredients in meat food products intestines and certain other named internal organs.

4. Meat is defined as "The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus .... It does not include the muscle found in the lips, snout or ears." 9 C.F.R. § 301.2(tt).

5. A meat byproduct is "Any part capable of use as human food, other than meat, which has been derived from one or more cattle, sheep, swine, or goats." 9 C.F.R. § 301.(vv).

Thus, the Michigan Law requires, basically, skeletal-type meat in Grade 1 sausage whereas the regulations permit the use of internal organs, with specific exceptions, meat byproducts and meat as ingredients in sausage.

6. While the Michigan Law (M.S.A. § 12.964(2)(a) permits the sale of Grade 1 sausage prepared only from the striated muscle of chicken or turkey, subsections (f), (g), and (h) do not permit chicken or turkey to be added as an ingredient to any other sausage. By contrast, however, the regulations defining Cooked, Smoked Sausage (9 C.F.R. § 319.180) permits frankfurters, bologna and similar sausages to contain "poultry products which, individually or in combination, are not in excess of 15 percent of the total ingredients excluding water, in the sausage." Poultry products include chicken or turkey meat, skin, fat, gizzard and the heart or liver of a chicken or turkey. Sec. 7 C.F.R. § 81.1.

8. The regulation governing Cooked, Smoked Sausage (9 C.F.R. § 319.180) permits the use of partially defatted beef and/or pork fatty tissue "in an amount not exceeding 15 percent of the meat and meat byproduct ingredients." Partially defatted beef and pork fatty tissue are beef and pork byproducts. 9 C.F.R. §§ 319.1(e) and 319..29(a).

Because the Michigan Law defines Grade 1 sausage as consisting "only of skeletal fresh meat" the statute by definition precludes the use of beef and pork byproducts, poultry and poultry products, and goat meat and goat meat byproducts. However, under the regulations they are permissible ingredients.

The Michigan statute prohibits the use in Grade 1 sausage of: "Heart, tongue, liver cracklings, [cooked rind] or crackling meal, tripe [stomach], lungs, melts [spleen], eye, stomachs, weasand meats [windpipe, esophagus, or throat], udder, lips, ears or snouts." M.S.A. § 12.964(2)(a)(2). Because sausage is defined as a "meat food product" prepared in part from "meat byproducts" and because a "meat byproduct" is defined as "any part capable of use as human food, other than meat" all of the abovementioned articles would be, under the regulations, permissible ingredients in sausage.

9. The Michigan Law permits the addition to Grade 1 sausage of water or ice, if not excessive. The amount is unspecified. M.S.A. § 12.9642(2)(a). However, the statute limits the overall moisture content in the finished product to 65%. M.S.A. 12.964(2)(a)(1). The regulation also permits the addition of water or ice but limits the amount of such water or ice to "an amount not to exceed 3 percent of the total ingredients." 9 C.F.R. § 319.140. However, if the sausage is Cooked, Smoked Sausage (9 C.F.R. §319.180) it "shall contain no more than 10 percent of added water." The Michigan Law requires a "protein content of 12 percent." M.S.A. § 12.964(2)(a)(1).

There is no federal regulation governing overall moisture or protein content. Appellants and the United States Government, in an *amicus* brief, advance a formula, unchallenged by the appellees that permits computation of mois-

ture and protein content. For Cooked, Smoked Sausage, 9 C.F.R. § 319.180, this section fixes a maximum of 30% fat and 10% added water. Curative agents, condiments, and binders or extenders add 4%. This leaves 56% moisture and protein. Applying a ration recognized by the Department of Agriculture of 4:1 moisture to protein, protein totals 11.2% and overall moisture totals 54.8%.

If Cooked, Smoked Sausage is "all meat" or "all species" sausage then 9 C.F.R. § 319.180 allows a maximum of 30% fat, 10% added water, minimal amounts of condiments or curing agents but no binders or extenders. *Cf. Federation of Homemakers* v. *Butz,* 41 L.W. 2138 (C.A.-D.C. Aug. 18, 1972). Applying the same ratio, protein totals 12% and overall moisture 58%.

10. The Michigan Law limits the amount of "non-fat dry milk solids or dry whole milk" to 4 pounds per 100 pounds of sausage. M.S.A. §12.964(2)(a)(1). The regulations classify nonfat dry milk, calcium reduced skim milk and dried milk as binders or extenders. 9 C.F.R. § 319.140. All sausage in which binders or extenders are permitted "shall contain no more than 3.5 percent" binders or extenders. 9 C.F.R. § 319.140. Binders or extenders are permitted in Sausage Generally (9 C.F.R. § 319.140), Breakfast Sausage (9 C.F.R. § 319.143) and Cooked, Smoked Sausage (9 C.F.R. § 319.180).

11. Under the Michigan Law, "trimmable fat" permitted in pork, breakfast or roasted sausage may not exceed 45%. M.S.A. §12.964(2)(a)(1). The regulations, however, permit Fresh Pork, Breakfast and Smoked Pork Sausage to contain "trimmable fat" in an amount not to exceed 50%. 9 C.F.R. §§ 319.141, 319.43 and 319.160.

12. M.S.A. § 12.964(2)(a) permits the addition of "so-

dium potassium nitrate, sodium or potassium nitrite, ascorbic acid, or the salts thereof" to Grade 1 sausage but in unspecified amounts. The regulations, while permitting the use of those chemical substances, limits the amount of such chemicals. 9 C.F.R. § 318.7(c)(4).

13. The Michigan Law permits the addition of "eggs or egg products, chives, tomatoes, parsley, peppers, onions, garlic, [and] celery" to Grade 1 sausage. The regulations make no provision specifically allowing those substances to be added to any sausage. 9 C.F.R. §§ 319.140-319.181. However, it seems to be conceded that chives, parsley, peppers, onions and garlic are flavoring agents and thus proper ingredients of sausage. Eggs or egg products, tomatoes and celery are not specified by the regulations as permissible ingredients in sausage. Even though the Michigan Law does not *require* their addition, a conflict exists to the extent that they are permitted ingredients.

14. The Michigan Law provides that Pork, Breakfast and Roasted Sausage "shall not contain added water or ice." The regulations, on the other hand, permit Pork and Breakfast Sausage to contain water or ice not to exceed 3% of the total ingredients used. 9 C.F.R. §§ 319.141 and 319.143.

15. The Michigan Law prohibits the addition of artificial and vegetable coloring to sausage (M.S.A. § 12.964-(2)(a)(2) while the regulations permit the use of coloring matter and dyes if approved by the Administrator. 9 C.F.R. § 319.7(a)(2).

16. Under the Michigan Law "No product shall be sold as sausage . . . which is not grade . . . [Grade 1] and which does not meet the specifications for Grade 1 sausage." M.S.A. § 12.964(3). By contrast, however, there is no regu-

lation requiring or permitting a sausage product to be labeled Grade 1.

17. M.S.A. § 12.964(4) requires the name and address of the manufacturer to be plainly marked on each package. However, 9 C.F.R. § 317.2(c)(3) permits the name and place of business of the manufacturer, packer or distributor. Alternately by the phrase "Prepared by" or "Distributed for" may be used. 9 C.F.R. § 317.2(g)(1).

18. M.S.A. § 12.964(4) requires the name and address of the manufacturer to be affixed at least once per pound to smaller varieties of sausage. The regulations, however, permit the name and address of the manufacturer, packer or distributor to be affixed "on each 2 pounds of product." 9 C.F.R. §§ 316.10(b) and 317.2(g).

19. M.S.A. § 12.964(5) provides "all [sausage] products . . . may be sold in colored artificial casings . . . provided that, no such products shall be sold in colored natural casings." However, 9 C.F.R. §319.7(c)(3) does permit coloring matter and dyes to be applied to natural casings, if approved by the Administrator in specific cases.

COMMINUTED MEAT LAW

Caption editorially supplied

P.A. 1952, No. 228, Eff. Sept. 18

AN ACT providing for the protection of the public health and the prevention of fraud and deception by prohibiting the manufacture, sale, the offering for sale or exposing for sale or having in possession with intent to sell, sausage, meat loaf, hamburger, chili con carne, liver sausage, head cheese, sulze, blood sausage, New York (New England)

(pressed luncheon), and tongue sausage, that is adulterated or deleterious or not in compliance with this act; defining the mentioned products and other terms used; providing for licensing; regulating labeling and advertising; prescribing penalties for violations of this act; and repealing certain acts and parts of acts.

The People of the State of Michigan enact:

289.581 Comminuted meat law; definitions

Sec. 1. For the purpose of this act, the following definition of terms used therein shall apply:

(a) Cattle means bovine bulls, cows, steers and calves only.

(b) Beef is meat derived from cattle 1 year of age or older.

(c) Veal is meat derived from a calf not more than 1 year of age slaughtered in compliance with Michigan laws.

(d) Mutton is meat derived from sheep 1 year of age or older.

(e) Lamb is meat derived from sheep less than 1 year of age.

(f) Pork is meat derived from swine, excluding boars and from stags slaughtered in compliance with Michigan laws.

(g) Carcass is the commercially prepared or dressed body of any cattle, sheep or swine.

(h) Meat is the properly dressed, clean, sound flesh derived from cattle, swine or sheep sufficiently mature and in good health at the time of slaughter.

(i) Skeletal meat is any clean edible part of striated muscle including head meat and cheek meat.

(j) Fresh meat is meat which has undergone no substantial change in character since the time of slaughter.

(k) Comminuted meat is meat that has been subjected to a process whereby it has been reduced to minute particles.

(l) Tripe is the properly cleaned, scalded and cooked, stomach obtained from the slaughter of healthy cattle, swine or sheep.

(m) Pork sausage is sausage composed of fresh meat and fresh fat derived solely from swine.

(n) Breakfast sausage shall be composed of fresh meat and fresh fat derived from cattle, swine or sheep or a mixture of such meats.

(o) The word "person" shall include 1 or more natural persons, co-partnerships, associations or corporations. P.A. 1952, No. 228, § 1, Eff. Sept. 18.

289.582 Same; definitions

Sec. 2. For the purpose of this act the products within its purview are defined as follows:

(a) **Grade 1 sausage, moisture, protein, bacterial starters.** Grade 1 sausage shall consist only of skeletal fresh meat prepared from the animal carcass of cattle, swine or sheep or a mixture of such meats, or the striated muscle of chicken or turkey, either fresh, cured, salted, pickled or smoked, with or without added salt or spice, sodium or potassium nitrate, sodium or potassium nitrite, ascorbic acid, or the salts thereof, and with or without the addition or water or ice, with or without the addition of edible animal fat from the animals specified, nonfat dry milk solids or dry whole milk, eggs or egg products, chives, tomatoes, parsley, peppers, onions, garlic, celery, seasoning, flavoring, honey, sirup, sugar, pure refined dextrose or subsequent cooking or smoking.

(1) It may contain not to exceed 4 pounds non-fat dry milk solids or dry whole milk per 100 pounds of sausage.

The total percentage of moisture in the finished product shall not exceed 65%. The total percentage of protein shall not be less than 12%. The protein content requirement shall not apply to pork sausage, breakfast sausage, or roasted sausage but the finished product shall contain not more than 50% of fat by chemical analysis, the equivalent of 45% of trimmable fat, and shall not contain added water or ice, that is water or moisture of greater content than found normally in the meat itself.

(2) It shall not contain any cereal, vegetable flour, vegetable product, except those vegetable products specifically provided for, soya products, coal tar color, artificial color, vegetable coloring, stabilizer, gum, thickeners, excess added water or ice, boric acid or borates, sulphites, sulphur dioxide, sulphurous acid or any other harmful preservative, It shall not contain slaughter house by-products, heart, tongue, liver cracklings or crackling meal, tripe, lungs,

melts, eyes, stomachs, weasand meats, udder, lips, ears or snouts. No other parts of the animal or any other substance excepting as above specified shall be permitted in sausage.

(3) Harmless bacterial starters of the acidophilus type may be used in the preparation of such kinds of sausage as thuringer, lebanon bologna, cervelat, salami and pork roll in an amount not to exceed ½ of 1%. When used, the harmless bacterial starter shall be included in the list of ingredients in the order of its predominance.

(b) **Sausages.** The following products are considered to be sausage, whether processed or inserted in either natural or artificial casings or other containers: Weiners, bologna, ring bologna, knackwurst, roasted sausage, breakfast sausage, pork sausage, chicken sausage, turkey sausage, leona, beer salami, cooked salami, polish sausage, minced luncheon, all varieties of dry or semi-dry sausage, and other products prepared in sausage form and excluding loaves, liver products, head cheese, sulze, blood sausage, potato sausage, bockwurst, kiszka, tongue sausage and New York (New England) (pressed luncheon).

(c) **Hamburger, ground beef, fresh beef.** Fresh beef that has been comminuted, chopped, diced or ground shall be identified as either hamburger or ground beef and shall meet the following standards. Hamburger shall consist of comminuted, chopped, diced, or ground fresh beef with or without the addition of beef fat as such, and shall not contain more than 30% of fat. Ground beef shall meet the same requirements as hamburger except that it shall not contain more than 20% fat. Monosodium glutamate may be added if declared. It shall not contain heart, liver, tongue, tripe, stomach, cracklings or crackling meal, lungs, melts, eyes, weasand meats, head meat, cheek meat, udder, lips, ears, snouts, packing house by-products or added water

or ice, that is, water or moisture of greater content than found normally in the meat itself. It shall not contain any cereal, vegetable flour, vegetable product, bread or bread crumbs, dry milk, soya products, coal tar color, artificial color, vegetable coloring, stabilizer, gum, thickeners, cracker, roll, cereal by-product, starch, chemical preservative, boric acid or borates, sulphites, sulphur dioxide or sulphurous acid. No other parts of the animal or any other substance excepting as above specified shall be permitted in hamburger or ground beef.

(d) **Chili con carne.** Chili con carne is a product that shall contain not less than 40% of meat computed on the weight of the fresh meat from cattle, swine or sheep. Head meat, cheek meat and heart meat, exclusive of the heart cap, may also be used. The mixture may contain cereal or non-fat dry milk solids and seasoning. It shall not contain liver, tongue, cracklings or crackling meal, lungs, melts, spinal cords, eyes, stomach, udders, lips, ears or snouts. It shall not contain gum, thickeners, stabilizer, coal tar color, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulphur dioxide or sulphurous acid. No other parts of the animal shall be permitted in chili con carne.

(e) **Meat loaf.** Meat loaf is a product, processed in the form of a loaf, consisting of a mixture of meat from cattle, swine or sheep or mixture of such meats that are not necessarily skeletal but shall be wholesome and edible. It may also contain salt, seasoning, sodium or potassium nitrite, ascorbic acid, or the salts thereof, sodium or potassium nitrate, cereal, vegetable, non-fat dry milk solids, soya flour, eggs or egg products, macaroni, cheese, condiments, nuts, fruits or gelatin. It shall not contain gum, thickener, stabilizer, coal tar color, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphur di-

oxide, sulphites or sulphurous acid. It shall not contain cracklings or crackling meal, lungs, melts, eyes, lips, udders, ears or spinal cords. No other parts of the animal or any other substance excepting as above specified shall be permitted in meat loaf.

(f) **Liver sausage.** Liver sausage is the product, either cooked or smoked prepared from sound, edible liver with or without the addition of edible fat, meat, tripe, brains, pork skins, pork and beef tongues, cereal, soya flour, nonfat dry milk solids, nuts, eggs or egg products, pimentos, salt, sugar, dextrose, ascorbic acid, or the salts thereof, honey, spice, flavorings, seasonings and with or without sodium or potassium nitrate or sodium or potassium nitrite. It shall not contain liver or meat from animals other than cattle, swine or sheep. It shall not contain gum, thickener, stabilizer, coal tar color, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulpur dioxide, sulphurous acid, crackling meal, lungs, melts, eyes, lips, udders, ears or spinal cords. No other parts of the animal or any other substance excepting as above specified shall be permitted in liver sausage.

(g) **Head cheese and sulze.** Head cheese and sulze are the products of which the main constituents are meat or snouts, ears or tongues obtained from swine or cattle or sheep and with addition of gelatin or salt, vinegar, sugar, spice and sodium or potassium nitrate, ascorbic acid, or the salts thereof, and sodium or potassium nitrite. They shall not contain more than 40% of gelatin by weight of the finished product. They shall not contain liver, cracklings or crackling meal, melts, spinal cords, eyes, stomach, udders or lungs. They shall not contain gum, thickener, stabilizer, coal tar color, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphite, sulphur dioxide or sulphurous acid. No other parts of the animal

or any other substance excepting as above specified shall be permitted in head cheese or sulze.

(h) **Blood sausage, tongue sausage.** Blood sausage and tongue sausage are products in sausage form consisting of meat or blood and other edible parts obtained from the slaughter of cattle, swine or sheep cooked with seasoning and flavoring material, with or without the addition of non-fat dry milk solids or cereal. They shall not contain gum, thickener, stabilizer, coal tar color, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulphur dioxide or sulphurous acid. They shall not contain cracklings or crackling meal, lungs, melts, spinal cords, eyes, udders, lips or any other substance not above specified. As amended P.A. 1952, No. 228, § 2, Eff. Sept. 18; P.A. 1954, No. 104, § 1, Eff. Aug. 13; P.A. 1955, No. 183, § 1, Eff. Oct. 14; P.A. 1957, No. 315, § 1, Eff. Sept. 27; P.A. 1958, No. 119, § 1, Eff. Sept. 13; P.A. 1959, No. 159, § 1, Eff. March 19, 1960; P.A. 1960, No. 152, § 1, Eff. Aug. 17; P.A. 1962, No. 184, § 1, Eff. March 28, 1963.

289.583 Sausage; grading

Sec. 3. No product shall be sold as sausage, except liver sausage, potato sausage, tongue sausage, blood sausage, bockwurst, kishka and New York (New England) (pressed luncheon), which is not graded as above and which does not meet the specifications for grade I sausage. P.A. 1952, No. 228, § 3, Eff. Sept. 18.

289.584 Markings on packages and pieces; all meat or all beef labels

Sec. 4. The name of any product manufactured or sold under the provisions of this act, together with the name and address of the manufacturer, and also in the case of

sausage, the term "Grade 1", shall be plainly marked or tagged on each package and true container as delivered to the retailer. Sausage in casings of the ordinary "ring" variety or larger shall be marked or tagged at least once to every piece, and sausage of the smaller varieties shall bear 1 or more marks or 1 or more tags to each pound, as hereinabove provided. Sausage labeled or advertised as all meat or all beef shall not contain any non-fat dry milk solids or dry whole milk.

Address of manufacturer; Michigan registration number; U.S. department of agriculture number. It shall be sufficient to give the address of the manufacturer's main or executive office if the package or true container of the product as delivered to the retailer is plainly marked or tagged with a Michigan registration number assigned by the department of agriculture or the United States department of agriculture establishment number of the plant at which the product was manufactured. P.A.1952, No. 228, § 4, Eff. Sept. 18, as amended P.A.1962, No. 184, § 1, Eff. March 28, 1963; P.A.1963, No. 123, § 1, Imd. Eff. May 10.

289.585 Colored artificial casings or containers

Sec. 5. All products manufactured under terms of this act may be sold in colored artificial casings or container: Provided, that no such products shall be sold in colored natural casings. P.A.1952, No. 228, § 5, Eff. Sept. 18.

289.586 Adulteration

Sec. 6. Any product within the purview of this act shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health or if it contains any diseased, contaminated, filthy or decomposed substance, or is manufactured in whole or in part, from a diseased, contaminated,

filthy or decomposed substance, or if it is the product of an animal which has died otherwise than by slaughter, and any person who manufactures, sells, offers for sale, exposes for sale, or has in his possession with intent to sell such adulterated product, shall be guilty of a misdemeanor and punished therefor. P.A.1952, No. 228 § 6, Eff. Sept. 18.

289.587 Manufacture or sale in violation of standards

Sec. 7. Sausage shall be deemed in violation of the standards of this act if it contains excessive non-fat dry milk solids or dry whole milk, moisture and/or fat. Sausage, loaf, hamburger and chili con carne, liver sausage, head cheese, sulze, blood sausage and tongue sausage shall be deemed in violation of the standards of this act if it contains any substance or product either specifically prohibited or not specifically provided for in its class according to the definitions set forth in section 2 of this act,[1] and any person who manufactures, sells, offers for sale, exposes for sale or has in his possession with intent to sell any such product in violation of the standards herein set forth or any such product that is not properly branded or labeled within the meaning of this act, shall be guilty of a misdemeanor and punished therefor. P.A.1952, No. 228, § 7, Eff. Sept. 18.

289.588 License, application, form, contents, fees, issuance, renewal; exceptions, sale incident to regularly established business

Sec. 8. Before any person or persons, firm or corporation, packer or manufacturer shall manufacture any product within the meaning of this act, he or they shall first

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[1] Section 289.582.

obtain a license from the Michigan agricultural commission. A license shall be obtained for each plant or place of business where sausage, loaves, hamburger, chili con carne, liver sausage, head cheese, sulze, blood sausage, New York (New England) (pressed luncheon), or tongue sausage is manufactured. Applications for such licenses shall be made to the Michigan agricultural commission, upon such forms as furnished by it, and shall show such information as may be demanded by the department of agriculture and shall be accompanied by a statutory fee as follows:

(a) Twenty-five dollars in the case of a manufacturer who manufactures and sells at retail at but 1 place in the state, which place shall be designated in the license.

(b) Fifty dollars in the case of a manufacturer making distribution through more than 1 and not exceeding 5 of his own establishments, for sale to the ultimate consumer, which place or places shall be designated in the license.

(c) One hundred dollars in the case of manufacturers or packing houses, making distribution through the usual trade channels for resale, and, in the case of a manufacturer making distribution through more than 5 of his own establishments for sale to the ultimate consumer, which place or places shall be designated in the license.

Upon receipt of such application the Michigan agricultural commission shall, after satisfactory investigation, issue to the person, firm or corporation making such application a license to manufacture sausage, meat loaf, hamburger, chili con carne, liver sausage, head cheese, sulze, blood sausage, New York (New England) (pressed luncheon,) or tongue sausage as defined in this act: Provided, That it shall be within the discretion of the commission to refuse any license upon application of a former licensee

whose license was revoked by the commission upon 3 or more convictions of violations of the law. All licenses issued under the provisions hereof shall be due and payable on or before August 1 and shall expire July 31 following the date of issuance; said licenses shall be renewed annually. The moneys received by the Michigan agricultural commission in payment of licenses issued under this section shall be paid into the state treasury general fund. The provisions of this section shall not apply to any farmer manufacturing and/or selling not to exceed 300 pounds of sausage in any 1 calendar year from pork and/or other meat produced or grown on his own farm. A farmer as used in this section shall be construed to include the owner, tenant or lessee of the farm. The provisions of this section shall not apply to any retailer who grinds fresh pork sausage and/or other meat products for sale at retail to the ultimate consumer upon his premises or in isolated cases sells such products to other retailers, or a sale incident to his regularly established business. P.A.1952, No. 228, § 8, Eff. Sept. 18, as amended P.A.1954, No. 104, § 1, Eff. Aug. 13; P.A.1958, No. 43, § 1, Imd. Eff. April 7.

289.589 False advertising

Sec. 9. Any person or persons, firm or corporation, who shall publicly advertise in or by newspapers, window banners, hand bills, bulletins, bulletin boards, radio, television or otherwise, falsely with reference to the composition of products within the scope of this act manufactured, sold or offered for sale by him shall be deemed guilty of a misdemeanor. P.A.1952, No. 228, § 9, Eff. Sept. 18.

289.589a Foods for infants

Sec. 9a. Foods especially prepared for infants are exempt from the provisions of this act when manufactured, sold, advertised or offered for sale for such purposes. P.A.

1952, No. 228, § 9a, added by P.A.1962, No. 184, § 1, Eff. March 28, 1963.

289.589b Prior notice to potential violator

Sec. 9b. The department of agriculture shall give prior notice to any potential violator of this act that a complaint may be filed against him. P.A. 1952, No. 228, § 9b, added by P.A.1962, No. 184, § 1, Eff. March 28, 1963.

289.590 Violation, penalty

Sec. 10. Whoever shall do any of the acts or things prohibited by this act or in any way violate any of its provisions shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than $100.00 and the costs of prosecution, or by imprisonment in the county jail for not more than 90 days or by both such fines and imprisonment in the discretion of the court.

Revocation or suspension of license, hearing, appeal. It shall be mandatory for the director of agriculture to summon to appear before him any licensee who shall have been convicted 2 times for violation of any provision of this act in any 12-month period. The director shall give written notice to the licensee stating that he contemplates the suspension or revocation of the license herein provided and naming his reasons therefor. Said notice shall designate a time of hearing before said director and shall be mailed by registered mail to the licensee not less than 10 days prior to the date set for said hearing. On the day of the hearing the licensee may present such evidence as he deems fit. After hearing the testimony the director shall revoke or may temporarily suspend such license. Any person, firm, corporation, packer, or manufacturer whose license has been so revoked or temporarily suspended shall discontinue the manufacture, sale, or offer for sale within this state of

any of the comminuted meat products within the purview of this act. Any licensee who feels aggrieved at the decision of the director may appeal within 10 days through writ of certiorari to the circuit court of the county where licensee resides. P.A.1952, No. 228 § 10, Eff. Sept. 18, as amended P.A. 1957, No. 315, § 1, Eff. Sept. 27, P.A. 1962, No. 184, § 1, Eff. March 28, 1963.

289.591 Act repealed

Sec. 11. Act No. 259 of the Public Acts of 1933, as amended, being sections 289.231 to 289.242, inclusive, of the Compiled Laws of 1948, is hereby repealed. P.A.1952, No. 228, § 11, Eff. Sept. 18.

289.592 Short title

Sec. 12. This act shall be known and may be cited as the Michigan comminuted meat law. P.A.1952, No. 228, § 12, Eff. Sept. 18.

FOOD AND DRUGS

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SUBCHAPTER I.—INSPECTION REQUIREMENTS; ADULTERATION AND MISBRANDING

§ 601. Definitions.

As used in this chapter, except as otherwise specified, the following terms shall have the meanings stated below:

(a) The term "Secretary" means the Secretary of Agriculture of the United States or his delegate.

(b) The term "firm" means any partnership, association, or other unincorporated business organization.

(c) The term "meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(d) The term "renderer" means any person, firm, or corporation engaged in the business of rendering carcasses or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines, except rendering conducted under inspection or exemption under this subchapter.

(e) The term "animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.

(f) The term "State" means any State of the United States and the Commonwealth of Puerto Rico.

(g) The term "Territory" means Guam, the Virgin Islands of the United States, American Samoa, and any other territory or possession of the United States, excluding the Canal Zone.

(h) The term "commerce" means commerce between any State, any Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia.

(i) The term "United States" means the States, the District of Columbia, and the Territories of the United States.

(j) The term "meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Secretary under such conditions as he may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat

food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(k) The term "capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Secretary to deter its use as human food, or it is naturally inedible by humans.

(l) The term "prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

(m) The term "adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2) (A) if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Secretary, make such article unfit for human food;

(B) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 346a of this title,

(C) if it bears or contains any food additive which is unsafe within the meaning of section 348 of this title,

(D) if it bears or contains any color additive which is unsafe within the meaning of section 376 of this title. *Provided,* That an article which is not adulterated under clause (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Secretary in establishments at which inspection is maintained under this subchapter;

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) if it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a

regulation or exemption in effect pursuant to section 348 of this title;

(8) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

(9) if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

(n) The term "misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) if its labeling is false or misleading in any particular;

(2) if it is offered for sale under the name of another food;

(3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) if its container is so made, formed, or filled as to be misleading;

(5) if in a package or other container unless it bears a label showing (A) the name and place of business of

the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numercial count: *Provided,* That under clause (B) of this subparagraph (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Secretary;

(6) if any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Secretary under section 607 of this title unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) if it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Secretary under section 607 of this title, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) if it is not subject to the provisions of subpara-

graph (7), unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Secretary, be designated as spices, flavorings, and colorings without naming each: *Provided,* That, to extent that compliance with the requirements of clause (B) of this subparagraph (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Secretary;

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary, after consultation with the Secretary of Health, Education, and Welfare, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided,* That, to the extent that compliance with the requirements of this subparagraph (11) is impracticable, exemptions shall be established by regulations promulgated by the Secretary; or

(12) If it fails to bear, directly thereon or on its container, as the Secretary may by regulations prescribe the inspection legend and, unrestricted by any of the foregoing, such other information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(o) The term "label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(p) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(q) The term "Federal Food, Drug, and Cosmetic Act" means the Act so entitled, approved June 25, 1938 (52 Stat. 1004), and Acts amendatory thereof or supplementary thereto.

(r) The terms "pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the Federal Food, Drug, and Cosmetic Act.

(s) The term "official mark" means the official inspection legend or any other symbol prescribed by regulations of the Secretary to identify the status of any article or animal under this Act.

(t) The term "official inspection legend" means any symbol prescribed by regulations of the Secretary showing that an article was inspected and passed in accordance with this chapter.

(u) The term "official certificate" means any certificate prescribed by regulations of the Secretary for issuance by an inspector or other person performing official functions under this chapter.

(v) The term "official device" means any device prescribed or authorized by the Secretary for use in applying any official mark.

Mar. 4, 1907, c. 2907, Title I, § 1, as added Dec. 15, 1967, Pub. L. 90-201, § 2, 81 Stat. 584.

References in Text. Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (q) and (r), is classified to chapter 9 of this title.

Effective date. Section 20 of Pub. L. 90-201 provided that:

"This Act [see Short Title note hereunder] shall become effective upon enactment except as provided in paragraphs (a) through (d):

"(a) The provisions of paragraph (b) (1) and (c) of section 10 and the provisions of section 20 of the Federal Meat Inspection Act, as amended by sections 7 and 10 of this Act [sections 610 and 620 of this title], and the provisions of section 18 of this Act repealing paragraph (b) of section 306 of the Tariff Act of 1930 [section 1306(b) of Title 19], shall become effective upon the expiration of sixty days after enactment hereof [Dec. 15, 1967].

"(b) The provisions of title I of the Federal Meat Inspection Act, as amended by this Act [this subchapter], shall become effective with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof upon the expiration of sixty days after enactment hereof [Dec. 15, 1967].

"(c) Section 11 of this Act, amending section 23, of the Federal Meat Inspection Act [section 623 of this title] shall become effective upon the expiration of sixty days after enactment hereof [Dec. 15, 1967].

"(d) Section 204 of the Federal Meat Inspection Act, as added by section 14 of this Act [section 644 of this title], shall become effective upon the expiration of sixty days after enactment hereof [Dec. 15, 1967]."

Short Title. Section 1 of Pub. L. 90-201 provided in part: "That this Act [which enacted sections 601, 602, 624, 641-645, 661, 671-680, and 691 of this title, amended sections 603-623 of this title, repealed section 96 of this title and section 1306(b) of Title 19, and enacted provisions set out as notes under this section] may be cited as the 'Wholesome Meat Act'."

Section 1 of Pub. L. 90-201 provided in part that the provisions of Act Mar. 4, 1907, as amended, classified to subchapters I-IV of this chapter, are designated as the "Federal Meat Inspection Act".

Separability of Provisions. Section 19 of Pub. L. 90-201 provided that: "If any provision of this Act or of the amendments made hereby [see Short Title note hereunder] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the remaining amendments and of the application of such provision to other persons and circumstances shall not be affected thereby."

Legislative History. For legislative history and purpose of Pub. L. 90-201, see 1907 U.S. Code Cong and Adm. News, p. 2188.

§ 602. Congressional statement of findings

Meat and meat food products are an important source of the Nation's total supply of food. They are consumed

throughout the Nation and the major portion thereof moves in interstate or foreign commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are *wholesome, not adulterated,* and *properly marked, labeled, and packaged.* Unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat food products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and animals which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce, and that regulation by the Secretary and cooperation by the States and other jurisdiction as contemplated by this chapter are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers.

Mar. 4, 1907, c. 2907, Title I, § 2, as added Dec. 15, 1967, Pub. L. 90-201, § 2, 81 Stat. 587.

Effective Date. Section effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, section effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub. L. 90-201, set out as a note under section 601 of this title.

§ 603. Inspection of meat and meat food products;

examination of animals before slaughtering; diseased animals slaughtered separately and carcasses examined

For the purpose of preventing the use in commerce of meat and meat food products which are adulterated, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in commerce; and all cattle, swine, sheep, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equines and when so slaughtered the carcasses of said cattle, sheep, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Secretary, as provided for in this chapter.

Mar. 4, 1907, c. 2907, Title I, § 3, formerly 1st par., 34 Stat. 1260, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 3, 12(a), (b), 81 Stat. 584, 588, 592.

1967 Amendment. Pub. L. 90-201, §§ 3(a), (b), 12(a), (b), deleted "interstate or foreign" preceding "commerce" in two instances, substituted "Secretary shall" for "Secretary, at his discretion, may" and deleted "of Agriculture" following "Secretary", included horses, mules, and other equines in the list of animals, and substituted "adulterated" for "unsound, unhealthful, unwholesome, or otherwise unfit for human food", respectively.

Effective Date of 1967 Amendment. Amendment by Pub. L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub. L. 90-201, set out as a note under section 601 of this title.

§ 604. Post mortem examination of carcasses and mark-

ing or labeling; destruction of carcasses condemned; reinspection

For the purposes set forth in section 603 of this title the Secretary shall cause to be made by inspectors appointed for that purpose a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, and other equines to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in any State, Territory, or the District of Columbia as articles of commerce which are capable of use as human food; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled as "Inspected and passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection, shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated, and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof.

Mar. 4, 1907, c. 2907, Title I, § 4, formerly 2d par., 34 Stat. 1260, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 3, 4, 12(a)-(d), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201, §§ 3(a), (b), 4, 12(a)-(d), deleted "interstate or foreign" preceding "commerce" and "of Agriculture" following "Secretary" in three instances; deleted "for human consumption" preceding "at any slaughtering" and "for transportation or sale" following "District of Columbia" and inserted "which are capable of use as human food" following "commerce"; included horses, mules, and other equines in the list of animals; substituted "adulterated" for "unsound, unhealthful, unwholesome, or otherwise unfit for human food" following "'Inspected and Condemned,' all carcasses and parts thereof "not adulterated" to be" and preceding ", shall be destroyed"; substituted "not adulterated" for "sound, healthful, wholesome, and fit for human food"; and substituted "not adulterated" for "unsound, unhealthful, unwholesome, or in any way unfit for human food" preceding "and if any carcass", respectively.

Effective Date of 1967 Amendment. Amendment by Pub. L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub. L. 90-201, set out as a note under section 601 of this title.

§ 605. Examination of carcasses brought into slaughtering or packing establishments, and of meat food products issued from and returned thereto; conditions for entry

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, horses, mules, and other equines, or the meat or meat products thereof which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products, which, after having been issued from any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Secretary may limit the entry of carcasses, parts of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this subchapter is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles

into such inspected establishments will be consistent with the purposes of this chapter.

Mar. 4, 1907, c. 9207, Title I, § 5, formerly 3d par., 34 Stat. 1261, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 5, 12(a), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201 §§ 5, 12(a), limited entry of articles into establishments under such prescribed conditions as would be consistent with the purpose of this chapter and included horses, mules, and other equines in the list of animals, respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 606. Inspectors of meat food products; marks of inspection; destruction of condemned products; products for export

For the purposes hereinbefore set forth the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all meat food products prepared for commerce in any slaughtering, meatcanning, salting, packing, rendering, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Secretary may remove inspectors from any establishment which fails to so destroy such condemned meat food products: *Provided,* That subject to the rules and regulations of the Sec-

retary the provisions of this section in regard to preservatives shall not apply to meat food products for export to any foreign country and which are prepared or packed according to the specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is to be exported; but if said article shall be in fact sold or offered for sale for domestic use or consumption then this proviso shall not exempt said article from the operation of all the other provisions of this chapter.

Mar. 4, 1907, c. 2907, Title I, § 6, formerly 4th par., 34 Stat. 1261, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 3, 12(e), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201, §§ 3(a), (b), 12(e), deleted "interstate or foreign" preceding "commerce" and "of Agriculture" following "Secretary" in three instances, and substituted "not adulterated" for "sound, healthful, and wholesome, and which contains no dyes, chemicals, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome, or unfit for human food" and "adulterated" for "unsound, unhealthful, and unwholesome, or which contain dyes, chemicals, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome, or unfit for human food", respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 607. Labeling, marking, and container requirements—Labeling receptacles or coverings of meat or meat food products inspected and passed; supervision by inspectors

(a) When any meat or meat food product prepared for commerce which has been inspected as hereinbefore provided and marked "Inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the

provisions of this chapter is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under the supervision of an inspector, which label shall state that the contents thereof have been "inspected and passed" under the provisions of this chapter; and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

Information on articles or containers; legible form

(b) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this subchapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Secretary may require, the information required under paragraph (n) of section 601 of this title.

Labeling; type styles and sizes; definitions and standards of identity or composition; standards of fill of container; consistency of Federal and Federal-State standards

(c) The Secretary, whenever he determines such action is necessary for the protection of the public, may prescribe: (1) the styles and sizes of type to be used with respect to

material required to be incorporated in labeling to avoid false or misleading labeling in marketing and labeling any articles or animals subject to this subchapter or subchapter II of this chapter; (2) definitions and standards of identity or composition for articles subject to this subchapter and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, and there shall be consultation between the Secretary and the Secretary of Health, Education, and Welfare prior to the issuance of such standards under either Act relating to articles subject to this chapter to avoid inconsistency in such standards and possible impairment of the coordinated effective administration of these Acts. There shall also be consultation between the Secretary and an appropriate advisory committee provided for in section 661 of this title, prior to the issuance of such standards under this chapter, to avoid, insofar as feasible, inconsistency between Federal and State standards.

Sales under false or misleading name, other marking or labeling or in containers of misleading form or size; trade names, and other marking, labeling, and containers approved by Secretary

(d) No article subject to this subchapter shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted.

Use withholding directive respecting false or misleading marking, labeling, or container; modification of false or misleading matter; hearing; withholding use pending proceedings; finality of Secretary's action; judicial review; application of section 194 of Title 7

(e) If the Secretary has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this subchapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the Secretary, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the Secretary so directs, be withheld pending hearing and final determination by the Secretary. Any such determination by the Secretary shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the United States court of appeals for the circuit in which such person, firm, or corporation has its principal place of business or to the United States Court of Appeals for the District of Columbia Circuit. The provisions of section 194 of Title 7 shall be applicable to appeals taken under this section.

Mar. 4, 1907, c. 2907, Title I, § 7, formerly 5th par., 34 Stat. 1262, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 3(a), 6, 81 Stat. 584, 588.

References in Text. Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c) (2), is classified to chapter 9 of this title.

Either Act and these Acts, referred to in subsec. (c) (2), mean the Federal Meat Inspection Act and the Federal Food, Drug, and Cosmetic Act.

1967 Amendment. Par. (a). Pub.L. 90-201, § 3(a), deleted "interstate or foreign" preceding "commerce".

Pub.L. 90-201, § 6(a), (b), deleted provisions prohibiting sales of meat or meat food products in interstate or foreign commerce under any false or deceptive names and permitting trade names or names which are useful to such products and are not false and deceptive and are approved by the Secretary of Agriculture, now incorporated in par. (d), and designated remaining provisions as par. (a), respectively.

Pars. (b)-(e). Pub.L. 90-201, § 6(c), added pars. (b)-(e).

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

Cross Reference. Federal Food, Drug, and Cosmetic Act defined, see section 601 (q) of this title.

§ 608. Sanitary inspection and regulation of slaughtering and packing establishments; rejection of adulterated meat or meat food products

The Secretary shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection of all slaughtering, meat canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "inspected and passed."

Mar. 4, 1907, c. 2907, Title I, § 8, formerly 6th par., 34 Stat. 1262, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 3, 12(a), (f), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201, §§ 3(a), (b), 12(a), (f), deleted "interstate or foreign" preceding "commerce" and "of Agriculture" following "Secretary", included horses, mules, and other equines in the list of animals and substituted "adulterated" for "unclean, unsound, unhealthful, unwholesome, or otherwise unfit for human food", respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 609. Examination of animals and food products thereof, slaughtered and prepared during nighttime

The Secretary shall cause an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines, and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of commerce to be made during the nighttime as well as during the daytime when the slaughtering of said cattle, sheep, swine, goats, horses, mules, and other equines, or the preparation of said food products is conducted during the nighttime.

Mar. 4, 1907, c. 2907, Title I, § 9, formerly 7th par., 34 Stat. 1262, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 3, 12(a), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201, §§ 3(a), (b), 12(a), deleted "interstate or foreign" preceding "commerce" and "of Agriculture" following "Secretary" and included horses, mules, and other equines in the list of animals, respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 610. Prohibited acts

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equines,

or any carcasses, parts of carcasses, meat or meat food products of any such animals—

Slaughtering animals or preparation of articles capable of use as human food

(a) slaughter any such animals or prepare any such articles which are capable of use as human food at any establishment preparing any such articles for commerce, except in compliance with the requirements of this chapter;

Sales, transportation, and other transactions

(b) sell, transport, offer for sale or transportation, or receive for transportation, in commerce, (1) any such articles which (A) are capable of use as human food and (B) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation; or receipt for transportation; or (2) any articles required to be inspected under this subchapter unless they have been so inspected and passed;

Adulteration or misbranding

(c) do, with respect to any such articles which are capable of use as human food, any act while they are being transported in commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded.

Mar. 4, 1907, c. 2907, Title I, § 10, formerly 8th par. 34 Stat. 1262, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 7, 81 Stat. 584, 589.

1967 Amendment. Pub.L. 90-201, § 7, included the list of animals and prohibited, except in compliance with requirements of this chapter, slaughtering animals or preparation of articles capable of use as human food, sales transportation, and other transactions, and acts of adulteration or misbranding, incorporating in subsec. (b) (2) existing prohibition on distributions in interstate or foreign commerce of noninspected articles.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that pars. (b) (1) and (c) of this section effective upon expiration of sixty days after Dec. 15, 1967, see section 20(a) of Pub.L. 90-201, set out as a note under section 601 of this title.

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1. Advising of rights

Defendant corporate officer charged with transporting and offering for transport across state lines scrap portions of beef carcasses which were uninspected and not decharacterized was not in "custody" at time he permitted Department of Agriculture agents and inspectors to examine his records and signed statement as to his activities or deprived of his freedom in any significant way and therefore could not complain of failure of agents and inspectors to apprise him of his rights to counsel and to silence at time he signed the statements. U. S. v. Morton Provision Co., D.C.Del.1968, 294 F.Supp. 385.

2. Searches and seizures

Where Department of Agriculture agents and inspectors had no search warrant at time they examined records of corporations of defendant officers, charged with transporting and offering to transport across state lines scrap portions of beef carcasses which were uninspected and not decharacterized, and the searches were not incidental to lawful arrest and there were no extraordinary circumstances justifying a warrantless search, searches and signed statements in connection therewith could stand only if defendants waived their rights under amendment. U. S. v. Morton Provision Co., D.C. Del.1968, 294 F.Supp. 385.

§ 611. Devices, marks, labels, and certificates; simulations—Devices to be made under authorization of Secretary

(a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark, or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary.

Other misconduct

(b) No person, firm, or corporation shall—

(1) forge any official device, mark, or certificate;

(2) without authorization from the Secretary use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) contrary to the regulations prescribed by the Secretary, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) knowingly possess, without promptly notifying the Secretary or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Secretary; or

(6) knowingly represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted.

Mar. 4, 1907, c. 2907, Title I, § 11, formerly 9th par., 34 Stat. 1263, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 8, 81 Stat. 584, 589.

1967 Amendment. Pub.L. 90-201, § 8, clarified application to brand manufacturers and printers of existing prohibition against counterfeiting official marks, labels or certificates, the provisions with respect to forgery, unauthorized use or failure to use official marks, or similar items, and similar offenses, and existing prohibitions with respect to false statements in official or nonofficial certificates, and added restriction upon possession of official devices, or devices, labels meat, or other articles bearing counterfeit official marks, counterfeit official certificates, or similar items, and prohibition against false representations.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 612. Inspection of animals for export

The Secretary shall cause to be made a careful inspection of all cattle, sheep, swine, goats, horses, mules, and other equines intended and offered for export to foreign countries at such times and places, and in such manner as he may deem proper, to ascertain whether such cattle, sheep, swine, goats, horses, mules, and other equines are free from disease.

Mar. 4, 1907, c. 2907, Title I, § 12, formerly 10th par., 34 Stat. 1263, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 3(b), 12(a), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201, §§ 3(b), 12(a), deleted "of Agriculture" following "Secretary" and included horses, mules, and other equines in the list of animals respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 613. Inspectors of animals for export; certificates of condition.

For the purpose of section 612 of this title the Secretary may appoint inspectors who shall be authorized to give an

official certificate clearly stating the condition in which such cattle, sheep, swine, goats, horses, mules, and other equines are found.

Mar. 4, 1907, c. 2907, Title I, § 13, formerly 11th par., 34 Stat. 1263, renumbered and amended Dec. 15, 1967, Pub. L. 90-201, §§ 1, 12(a), 81 Stat. 584, 592.

1967 Amendment. Pub.L. 90-201, § 12(a), included horses, mules, and other equines in the list of animals.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 614. Clearance prohibited to vessel carrying animals for export without inspector's certificate.

No clearance shall be given to any vessel having on board cattle, sheep, swine, goats, horses, mules, or other equines for export to a foreign country until the owner or shipper of such cattle, sheep, swine, goats, horses, mules, or other equines has a certificate from the inspector authorized to be appointed, stating that the said cattle, sheep, swine, goats, horses, mules, or other equines are sound and healthy, or unless the Secretary shall have waived the requirement of such certificate for export to the particular country to which such cattle, sheep, swine, goats, horses, mules, or other equines are to be exported.

Mar. 4, 1907, c. 2907, Title I, § 14, formerly 12th par., 34 Stat. 1263, renumbered and amended Dec. 1967, Pub.L. 90-201, §§ 1, 3(b), 12(a), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201, §§ 3(b), 12(a), deleted "of Agriculture" following "Secretary" and included horses, mules, and other equines in the list of animals, respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and

their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90.201, set out as a note under section 601 of this title.

§ 615. Inspection of carcasses, meat of which is intended for export

The Secretary shall also cause to be made a careful inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, and other equines, the meat of which, fresh, salted, canned, corned, packed, cured, or otherwise prepared, is intended and offered for export to any foreign country, at such times and places and in such manner as he may deem proper.

Mar. 4, 1907, c. 2907, Title I, § 15, formerly 13th par., 34 Stat. 1263, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 3(b), 12(a), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201, §§ 3(b), 12(a), deleted "of Agriculture" following "Secretary" and included horses, mules, and other equines in the list of animals, respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 616. Inspectors of carcasses, and so forth, meat of which is intended for export; certificates of condition

For the purpose of section 615 of this title the Secretary may appoint inspectors who shall be authorized to give an official certificate stating the condition in which said cattle, sheep, swine, goats, horses, mules, or other equines, and the meat thereof, are found.

Mar. 4, 1907, c. 2907, Title I, § 16, formerly 14th par., 34 Stat. 1263, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 12(a), 81 Stat. 584, 592.

1967 Amendment. Pub.L. 90-201, § 12(a), included horses, mules, or other equines in the list of animals.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 617. Clearance prohibited to vessel carrying meat for export without inspector's certificate

No clearance shall be given to any vessel having on board any fresh, salted, canned, corned, or packed beef, mutton, pork, or goat or equine meat for export to and sale in a foreign country from any port in the United States, until the owner or shipper thereof shall obtain from an inspector appointed under the provisions of this chapter a certificate that the said cattle, sheep, swine, goats, horses, mules, and other equines were sound and healthy at the time of inspection, and that their meat is sound and wholesome, unless the Secretary shall have waived the requirements of such certificate for the country to which said cattle, sheep, swine, goats, horses, mules, and other equines or meats are to be exported.

Mar. 4, 1907, c. 2907, Title I, § 17, formerly 15th par., 34 Stat. 1263, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 3(b), 12(a), (g), 81 Stat. 584, 588, 592.

1967 Amendment. Pub.L. 90-201, §§ 3(b), 12(a), (g), deleted "of Agriculture" following "Secretary", included horses, mules and other equines in the list of animals, and substituted "goat or equine meat" for "or goat meat, being the meat of animals killed after March 4, 1907, or except as hereinbefore provided", respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 618. Delivery of inspectors' certificates, and of copies

The inspectors provided for under this chapter shall be authorized to give official certificates of the condition of the cattle, sheep, swine, goats, horses, mules, and other equines, their carcasses and products as described in this chapter; and one copy of every certificate granted under the provisions of this chapter shall be filed in the Department of Agriculture, another copy shall be delivered to the owner or shipper, and when the cattle, sheep, swine, goats, horses, mules, and other equines or their carcasses and products are sent abroad, a third copy shall be delivered to the chief officer of the vessel on which the shipment shall be made.

Mar. 4, 1907, c. 2907, Title I, § 18, formerly 16th par., 34 Stat. 1263, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 12(a), (h), 81 Stat. 584, 592.

1967 Amendment. Pub.L. 90-201, § 12(a), (h), included horses, mules, and other equines in the list of animals and deleted "sound and wholesome" preceding "conditions", respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 619. Marking, labeling, or other identification of kinds of animals of articles' derivation; separate establishments for preparation and slaughtering activities

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Secretary to show the kinds of animals from which they were derived. When required by the Secretary, with respect to establishments at which

inspection is maintained under this subchapter, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, meat or meat food products are prepared.

Mar. 4, 1907, c. 2907, Title I, § 19, formerly 17th par., 34 Stat. 1264, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 9, 81 Stat. 584, 590.

1967 Amendment. Pub.L. 90-201, § 9, substituted provisions for marking, labeling, or other identification of kinds of animals whence the articles are derived and for separate establishments for preparation and slaughtering activities for prohibition against transportation or sale of meat or meat food products without complying with inspection provisions, now incorporated in section 610(b) of this title.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 620. Imports—Adulteration or misbranding prohibition; compliance with inspection, building construction standards, and other provisions; treatment as domestic articles subject to this chapter and food, drug, and cosmetic provisions; marking and labeling; personal consumption exemption

(a) No carcasses, parts of carcasses, meat or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines which are capable of use as human food, shall be imported into the United States if such articles are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of this chapter and regulations issued thereunder applicable to such articles in commerce within the United States. All such imported articles shall, upon entry into the United States, be deemed and treated as

domestic articles subject to the other provisions of this chapter and the Federal Food, Drug, and Cosmetic Act: *Provided,* That they shall be marked and labeled as required by such regulations for imported articles: *Provided further,* That nothing in this section shall apply to any individual who purchases meat or meat products outside the United States for his own consumption except that the total amount of such meat or meat products shall not exceed fifty pounds.

Terms and conditions for destruction

(b) The Secretary may prescribe the terms and conditions for the destruction of all such articles which are imported contrary to this section, unless (1) they are exported by the consignee within the time fixed therefor by the Secretary, or (2) in the case of articles which are not in compliance with the chapter solely because of misbranding, such articles are brought into compliance with the chapter under supervision of authorized representatives of the Secretary.

Payment of storage, cartage, and labor charges by owner or consignee; liens

(c) All charges for storage, cartage, and labor with respect to any article which is imported contrary to this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against such article and any other article thereafter imported under this chapter by or for such owner or consignee.

Prohibition

(d) The knowing importation of any article contrary to this section is prohibited.

Reports to Congress

(e) Not later than March 1 of each year the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate a comprehensive and detailed written report with respect to the administration of this section during the immediately preceding calendar year. Such report shall include, but shall not be limited to—

(1) a certification by the Secretary that foreign plants exporting carcasses or meat or meat products referred to in subsection (a) of this section have complied with requirements at least equal to all the inspection, building construction standards, and all other provisions of this chapter and regulations issued thereunder;

(2) the names and locations of plants authorized or permitted to have imported into the United States therefrom carcasses or meat or meat products referred to in subsection (a) of this section;

(3) the number of inspectors employed by the Department of Agriculture in the calendar year concerned who were assigned to inspect plants referred to in paragraph (e) (2) hereof and the frequency with which each such plant was inspected by such inspectors;

(4) the number of inspectors licensed by each country from which any imports subject to the provisions of this section were imported who were assigned, during the calendar year concerned, to inspect such

imports and the facilities in which such imports were handled and the frequency and effectiveness of such inspections; and

(5) the total volume of carcasses or meat or meat products referred to in subsection (a) of this section which was imported into the United States during the calendar year concerned from each country, including a separate itemization of the volume of each major category of such imports from each country during such year, and a detailed report of rejections of plants and products because of failure to meet appropriate standards prescribed by this chapter.

Mar. 4, 1907, c. 2907, Title I, § 20, formerly 18th par., 34 Stat. 1264, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 10, 81 Stat. 584, 590.

References in Text. Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a), is classified to chapter 9 of this title.

1967 Amendment. Pub.L. 90-201, § 10, substituted imported articles provisions for penalty provisions deeming offenses as misdemeanors and punishable by fine of $10,000 or imprisonment for two years or both, now covered in section 676(a) of this title.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective upon expiration of sixty days after Dec. 15, 1967, see section 20(a) of Pub.L. 90-201, set out as a note under section 601 of this title.

Cross Reference. Federal Food, Drug, and Cosmetic Act defined, see section 601 (q) of this title.

§ 621. Inspectors to make examinations provided for; appointment; duties; regulations

The Secretary shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines, the inspection of which is provided for under the provisions of this chapter, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary

conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this chapter and by the rules and regulations to be prescribed by said Secretary; and said Secretary shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this chapter, and all inspections and examinations made under this chapter shall be such and made in such manner as described in the rules and regulations prescribed by said Secretary not inconsistent with provisions thereof.

Mar. 4, 1907, c. 2907, Title I, § 21, formerly 19th par., 34 Stat. 1264, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 3(b), 12(a), (i), 81 Stat. 584, 588, 592, 593.

1967 Amendment. Pub.L. 90-201, §§ 3(b), 12(a), (i), deleted "of Agriculture" following "Secretary" in four instances, included horses, mules, and other equines in the list of animals, and substituted "not adulterated" for "sound, healthful, wholesome, and fit for human food, and to contain no dyes, chemicals, preservatives, or ingredients which render such meat food product unsound, unhealthful, unwholesome, or unfit for human food; and to have been prepared under proper sanitary conditions, hereinbefore provided for", respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 622. Bribery of or gifts to inspectors or other officers and acceptance of gifts

Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give,

pay, or offer, directly or indirectly, to any inspector, deputy inspector, chief inspector, or any other officer or employee of the United States authorized to perform any of the duties prescribed by this chapter or by the rules and regulations of the Secretary any money or other thing of value, with intent to influence said inspector, deputy inspector, chief inspector, or other officer or employee of the United States in the discharge of any duty provided for in this chapter, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not less than $5,000 nor more than $10,000 and by imprisonment not less than one year nor more than three years; and any inspector, deputy inspector, chief inspector, or other officer or employee of the United States authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in commerce any gift, money, or other thing of value, given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than $1,000 nor more than $10,000 and by imprisonment not less than one year nor more than three years.

Mar. 4, 1907, c. 2907, Title I, § 22, formerly 20th par., 34 Stat. 1264, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 3, 81 Stat. 584, 588.

1967 Amendment. Pub.L. 90-201, § 3(a), (b), deleted "interstate or foreign" preceding "commerce" and "of Agriculture" following "Secretary", respectively.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, amendment effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201 set out as a note under section 601 of this title.

§ 623. Exemptions from inspection requirements—Personal slaughtering and custom slaughtering for personal, household, guest, and employee uses

(a) The provisions of this subchapter requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations for commerce shall not apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor to the custom slaughter by any person, firm, or corporation of cattle, sheep, swine or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transporation in commerce of the carcasses, parts therof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: *Provided,* That such custom slaughterer does not engage in the business of buying or selling any carcasses, parts of carcasses, meat or meat food products of any cattle, sheep, swine, goats or equines, capable of use as human food.

Territorial exemption; refusal, withdrawal, or modification

(b) The Secretary may, under such sanitary conditions as he may by regulation prescribe, exempt from the inspection requirements of this subchapter the slaughter of animals, and the preparation of carcasses, parts thereof, meat and meat food products, by any person, firm, or corporation in any Territory not organized with a legislative

body solely for distribution within such Territory when the Secretary determines that it is impracticable to provide such inspection within the limits of funds appropriated for administration of this chapter and that such exemption will otherwise facilitate enforcement of this chapter. The Secretary may refuse, withdraw, or modify any exemption under this paragraph (b) in his discretion whenever he determines such action is necessary to effectuate the purposes of this chapter.

Adulteration and misbranding provisions applicable to inspection-free articles

(c) The adulteration and misbranding provisions of this subchapter, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection or not required to be inspected under this section.

Mar. 4, 1907, c. 2907, Title I, § 23, formerly 21st, 22d pars., 34 Stat. 1265, amended June 29, 1938, c. 810, 52 Stat. 1235, renumbered and amended Dec. 15, 1967, Pub.L. 90-201, §§ 1, 11, 81 Stat. 584, 591.

1967 Amendment. Pub. L. 90-201 § 11, substituted provisions for personal, custom, and territorial slaughtering exemptions and for application of adulteration and misbranding provisions to inspection-free articles for farmer definition and retail butcher and retail dealer exemption provisions.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-201 effective upon expiration of sixty days after Dec. 15, 1967, see section 20(c) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 624. Storage and handling regulations; violations; exemption of establishments subject to non-Federal jurisdiction

The Secretary may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat

food products of cattle, sheep, swine, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for commerce, or importing, such articles, whenever the Secretary deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited. However, such regulations shall not apply to the storage or handling of such articles at any retail store or other establishment in any State or organized Territory that would be subject to this section only because of purchases in commerce, if the storage and handling of such articles at such establishment is regulated under the laws of the State or Territory in whch such establishment is located, in a manner which the Secretary, after consultation with the appropriate advisory committee provided for in section 661 of this title, determines is adequate to effectuate the purposes of this section.

Mar. 4, 1907, c. 2907, Title I, § 24, as added Dec. 15, 1967, Pub.L. 90-201, § 13, 81 Stat. 593.

Efective Date. Section effective Dec. 15, 1967, except that with respect to equines (other than horses) and their carcasses and parts thereof, meat, and meat food products thereof, section effective upon expiration of sixty days after Dec. 15, 1967, see section 20(b) of Pub.L. 90-201, set out as a note under section 601 of this title.

SUBCHAPTER II.—

MEAT PROCESSORS AND RELATED INDUSTRIES

§ 641. Prohibition of subchapter I inspection of articles not intended for use as human food; denaturation or other identification prior to distribution in commerce; inedible articles

Inspection shall not be provided under subchapter I of this chapter at any establishment for the slaughter of cattle, sheep, swine, goats, horses, mules, or other equines, or the preparation of any carcasses or parts or products of such animals, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the Secretary to deter their use for human food. No person, firm, or corporation shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in commerce, or import, any carcasses, parts thereof, meat or meat food products of any such animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Secretary or are naturally inedible by humans.

Mar. 4, 1907, c. 2907, Title II, § 201, as added Dec. 15, 1967, Pub.L. 90-201, § 14, 81 Stat. 593.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 90-201, see 1967 U.S.Code Cong. and Adm.News, p. 2188.

§ 642. Recordkeeping requirement—Classes of persons bound; scope of disclosure; access to places of business; examination of records, facilities, and inventories; copies; samples

(a) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses; and all persons, firms, and corporations subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Secretary, afford such representative access to their places of business and

opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor—

(1) Any persons, firms, or corporations that engage, for commerce, in the business of slaughtering any cattle, sheep, swine, goats, horses, mules, or other equines, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food;

(2) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers or otherwise), or transporting in commerce, or storing in or for commerce, or importing, any carcasses, or parts or products of carcasses, of any such animals;

(3) Any persons, firms, or corporations that engage in business, in or for commerce, as renderers, or engage in the business of buying, selling, or transporting, in commerce, or importing, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines, or parts of the carcasses of any such animals that died otherwise than by slaughter.

Period of maintenance

(b) Any record required to be maintained by this section shall be maintained for such period of time as the Secretary may by regulations prescribe.

Mar. 4, 1907, c. 2907, Title II, § 202, as added Dec. 15, 1967, Pub.L. 90-201, § 14, 81 Stat. 593.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 643. Registration of business, name of person, and trade names

No person, firm, or corporation shall engage in business, in or for commerce, as a meat broker, renderer, or animal food manufacturer, or engage in business in commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any cattle, sheep, swine, goats, horses, mules, or other equines, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for commerce, or engage in the business of buying, selling, or transporting in commerce, or importing, any dead, dying, disabled, or diseased animals of the specified kinds, or parts of the carcasses of any such animals that died otherwise than by slaughter, unless when required by regulations of the Secretary, he has registered with the Secretary his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

Mar. 4, 1907, c. 2907, Title II, § 203, as added Dec. 15, 1967, Pub.L. 90-201, § 14, 81 Stat. 594.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 644. Regulation of transactions, transportation, or importation of 4-D animals to prevent use as human food

No person, firm, or corporation engaged in the business of buying, selling, or transporting in commerce, or importing, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in commerce,

or import, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules or other equines, or parts of the carcasses of any such animals that died otherwise than by slaughter, unless such transaction, transportation or importation is made in accordance with such regulations as the Secretary may prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

Mar. 4, 1907, c. 2907, Title II, § 204, as added Dec. 15, 1967, Pub.L. 90-201, § 14, 81 Stat. 594.

Effective Date. Section effective upon expiration of sixty days after Dec. 15, 1967, see section 20(d) of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 645. Federal provisions applicable to State or Territorial business transactions of a local nature and not subjected to local authority

The authority conferred on the Secretary by section 642, 643, or 644 of this title with respect to persons, firms, and corporations engaged in the specified kinds of business in or for commerce may be exercised with respect to persons, firms, or corporations engaged, in any State or organized Territory, in such kinds of business but not in or for commerce, whenever the Secretary determines, after consultation with an appropriate advisory committee provided for in section 661 of this title, that the State or Territory does not have at least equal authority under its laws or such authority is not exercised in a manner to effectuate the purposes of this chapter including the State providing for the Secretary or his representative being offered access to such places of business and the facilities, inventories, and records thereof, and the taking of reasonable samples, where he determines necessary in carrying out his responsibilities under this chapter; and in such case the provisions of section 642, 643, or 644 of this title, respectively,

shall apply to such persons, firms, and corporations to the same extent and in the same manner as if they were engaged in such business in or for commerce and the transactions involved were in commerce.

Mar. 4, 1907, c. 2907, Title II, § 205, as added Dec. 15, 1967, Pub.L. 90-201, § 14, 81 Stat. 594.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

SUBCHAPTER III.—

FEDERAL AND STATE COOPERATION

§ 661. Federal and State cooperation—Congressional statement of policy

(a) It is the policy of the Congress to protect the consuming public from meat and meat food products that are adulterated or misbranded and to assist in efforts by State and other Government agencies to accomplish this objective. In furtherance of this policy—

Development and administration of State meat inspection program equal to subchapter I ante and post mortem inspection, reinspection, and sanitation requirements

(1) The Secretary is authorized, whenever he determines that it would effectuate the purposes of this chapter to cooperate with the appropriate State agency in developing and administering a State meat inspection program in any State which has enacted a State meat inspection law that imposes mandatory ante mortem and post mortem inspection, reinspection and sanitation re-

quirements that are at least equal to those under subchapter I of this chapter, with respect to all or certain classes of persons engaged in the State in slaughtering cattle, sheep, swine, goats, or equines, or preparing the carcasses, parts thereof, meat or meat food products, of any such animals for use as human food solely for distribution within such State.

Development and administration of State program with authorities equal to subchapter I authorities; cooperation with Federal agencies

(2) The Secretary is further authorized, whenever he determines that it would effectuate the purposes of this chapter, to cooperate with appropriate State agencies in developing and administering State programs under State laws containing authorities at least equal to those provided in subchapter II of this chapter; and to cooperate with other agencies of the United States in carrying out any provisions of this chapter.

Scope of cooperation: advisory assistance, technical and laboratory assistance and training, and financial and other aid; limitation on amount; equitable allocation of Federal funds; adequacy of State program to obtain Federal cooperation and payments

(3) Cooperation with State agencies under this section may include furnishing to the appropriate State agency (i) advisory assistance in planning and otherwise developing an adequate State program under the State law; and (ii) technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other

aid for administration of such a program. The amount to be contributed to any State by the Secretary under this section from Federal funds for any year shall not exceed 50 per centum of the estimated total cost of the cooperative program; and the Federal funds shall be allocated among the States desiring to cooperate on an equitable basis. Such cooperation and payment shall be contingent at all times upon the administration of the State program in a manner which the Secretary, in consultation with the appropriate advisory committee appointed under paragraph (4), deems adequate to effectuate the purposes of this section.

Advisory committees

(4) The Secretary may appoint advisory committees consisting of such representatives of appropriate State agencies as the Secretary and the State agencies may designate to consult with him concerning State and Federal programs with respect to meat inspection and other matters within the scope of this chapter, including evaluating State programs for purposes of this chapter and obtaining better coordination and more uniformity among the State programs and between the Federal and State programs and adequate protection of consumers.

Single State agency; subordinate governmental unit as part of State agency

(b) The appropriate State agency with which the Secretary may cooperate under this chapter shall be a single agency in the State which is primarily responsible for the coordination of the State programs having objectives similar to those under this chapter. When the State program

includes performance of certain functions by a municipality or other subordinate governmental unit, such unit shall be deemed to be a part of the State agency for purposes of this section.

State meat inspection requirements; notice to Governor of nondevelopment or nonenforcement; designation of State as subject to subchapters I and IV; delay and revocation of designation; publication in Federal Register; notice of production of adulterated meat or meat food products; designation of State

(c) (1) If the Secretary has reason to believe, by thirty days prior to the expiration of two years after enactment of the Wholesome Meat Act, that a State has failed to develop or is not enforcing, with respect to all establishments within its jurisdiction (except those that would be exempted from Federal inspection under subparagraph (2)) at which cattle, sheep, swine, goats, or equines are slaughtered, or their carcasess, or parts or products thereof, are prepared for use as human food, solely for distribution within such State, and the products of such establishments, requirements at least equal to those imposed under subchapters I and IV of this chapter, he shall promptly notify the Governor of the State of this fact. If the Secretary determines, after consultation with the Governor of the State, or representative selected by him, that such requirements have not been developed and activated, he shall promptly after the expiration of such two-year period designate such State as one in which the provisions of subchapters I and IV of this chapter shall apply to operations and transactions wholly within such State: *Provided,* That if the Secretary has reason to believe that the State will activate such requirements within one additional year, he may delay such designation for said period, and not desig-

nate the State, if he determines at the end of the year that the State then has such requirements in effective operation. The Secretary shall publish any such designation in the Federal Register and, upon the expiration of thirty days after such publication, the provisions of subchapters I and IV of this chapter shall apply to operations and transactions and to persons, firms, and corporations engaged therein in the State to the same extent and in the same manner as if such operations and transactions were conducted in or for commerce. Thereafter, upon request of the Governor, the Secretary shall revoke such designation if the Secretary determines that such State has developed and will enforce requirements at least equal to those imposed under subchapter I and subchapter IV of this chapter: *And provided further,* That, notwithstanding any other provision of this section, if the Secretary determines that any establishment within a State is producing adulterated meat or meat food products for distribution within such State which would clearly endanger the public health he shall notify the Governor of the State and the appropriate Advisory Committee provided by section 661 of this title of such fact for effective action under State or local law. If the State does not take action to prevent such endangering of the public health within a reasonable time after such notice, as determined by the Secretary, in light of the risk to public health, the Secretary may forthwith designate any such establishment as subject to the provisions of subchapters I and IV of this chapter, and thereupon the establishment and operator thereof shall be subject to such provisions as though engaged in commerce until such time as the Secretary determines that such State has developed and will enforce requirements at least equal to those imposed under subchapter I and subchapter IV of this chapter.

Exemptions of retail stores, restaurants, and similar retail-type establishments

(2) The provisions of this chapter requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments if such establishments are subject to such inspection provisions only under this paragraph (c).

Termination of designation of State upon development and enforcement of minimum requirements; redesignation; designation for nonenforcement of minimum requirements; notice and publication in Federal Register

(3) Whenever the Secretary determines that any State designated under this paragraph (c) has developed and will enforce State meat inspection requirements at least equal to those imposed under subchapters I and IV of this chapter, with respect to the operations and transactions within such State which are regulated under subparagraph (1), he shall terminate the designation of such State under this paragraph (c), but this shall not preclude the subsequent redesignation of the State at any time upon thirty days notice to the Governor and publication in the Federal Register in accordance with this paragraph, and any State may be designated upon such notice and publication at any time after the period specified in this paragraph whether or not the State has theretofore been designated upon the Secretary determining that it is not effectively

enforcing requiremens at least equal to those imposed under subchapters I and IV of this chapter.

Periodic review; report to Congress

(4) The Secretary shall promptly upon enactment of the Wholesome Meat Act and periodically thereafter, but at least annually, review the requirements, including the enforcement thereof, of the several States not designated under this paragraph (c), with respect to the slaughter, and the preparation, storage, handling and distribution of carcasses, parts thereof, meat and meat food products, of such animals, and inspection of such operations, and annually report thereon to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate in the report required under section 691 of this title.

Definition of "State"

(d) As used in this section, the term "State" means any State (including the Commonwealth of Puerto Rico) or organized Territory.

Mar. 4, 1907, c. 2907, Title III, § 301, as added Dec. 15, 1967, Pub.L. 90-201, § 15, 81 Stat. 595.

References in Text. Enactment of the Wholesome Meat Act, referred to in subsec. (c) (1), (4), means Dec. 15, 1967, the date of enactment of Pub.L. 90-201, which was approved on Dec. 15, 1967.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 90-201, see 1967 U.S.Code Cong. and Adm.News, p. 2188.

SUBCHAPTER IV.—AUXILIARY PROVISIONS

§ 671. Inspection services; refusal or withdrawal; hearing; business unfitness based upon certain convictions;

other provisions for withdrawal of services unaffected; responsible connection with business; finality of Secretary's actions; judicial review; record

The Secretary may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) refuse to provide, or withdraw, inspection service under subchapter I of this chapter with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under subchapter I of this chapter because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any Federal or State court, of (1) any felony, or (2) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this chapter for withdrawal of inspection services under subchapter I from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity.

The determination and order of the Secretary with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection services files application for judicial review within thirty days after the effective date of such order

in the appropriate court as provided in section 674 of this title. Judicial review of any such order shall be upon the record upon which the determination and order are based.

Mar. 4, 1907, c. 2907, Title IV, § 401, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 597.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 90-201, see 1967 U.S.Code Cong. and Adm.News, p. 2188.

§ 672. Administrative detention; duration; pending judicial proceedings; notification of governmental authorities; release

Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution in, commerce or otherwise subject to subchapter I or II of this chapter, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of subchapter I of this chapter or of any other Federal law or the laws of any State or Terirtory, or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 673 of this title or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until

released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the Secretary that the article or animal is eligible to retain such marks.

Mar. 4, 1907, c. 2907, Title IV, § 402, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 598.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 673. Seizure and condemnation—Proceedings in rem; libel of information; jurisdiction; disposal by destruction or sale; proceeds into the Treasury; sales restrictions; bond; court costs and fees, storage, and other expenses against claimants; proceedings in admiralty; jury trial; United States as plaintiff

(a) Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in commerce or otherwise subject to subchapter I or II of this chapter, or is held for sale in the United States after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this chapter, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court as provided in section 674 of this title within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and

storage and other proper expenses, shall be paid into the Treasury of the United States, but the article or animal shall not be sold contrary to the provisions of this chapter, or the laws of the jurisdiction in which it is sold: *Provided,* That upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter, or the laws of the jurisdiction in which disposal is made, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the Secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal. The proceedings in such libel cases shall conform, as nearly as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

Condemnation or seizure under other provisions unaffected

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

Mar. 4, 1907, c. 2907, Title IV, § 403, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 598.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 674. Federal court jurisdiction of enforcement and injunction proceedings and other kinds of cases; limitations of section 607(e) of this title

The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other Territories, are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter, except as provided in section 607(e) of this title.

Mar. 4, 1907, c. 2907, Title IV, § 404, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 599.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 675. Assaulting, resisting, or impeding certain persons; murder; protection of such persons

Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this chapter shall be punished as provided under sections 1111 and 1114 of Title 18.

Mar. 4, 1907, c. 2907, Title IV, § 405, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 599.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 676. Violations—Misdemeanors; felonies; intent to defraud and distribution of adulterated articles; good faith

(a) Any person, firm, or corporation who violates any provision of this chapter for which no other criminal penalty is provided by this chapter shall upon conviction be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in section 601 (m) (8) of this title), such person, firm, or corporation shall be subject to imprisonment for not more than three years or a fine of not more than $10,000, or both: *Provided,* That no person, firm, or corporation, shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this chapter if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Secretary the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

Minor violations; written warning or criminal and civil proceedings

(b) Nothing in this chapter shall be construed as requiring the Secretary to report for prosecution or for the institution of libel or injunction proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

Mar. 4, 1907, c. 2907, Title IV, § 406, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 599.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 677. Other Federal laws applicable for administration and enforcement of chapter; location of inquiries; jurisdiction of Federal courts

For the efficient administration and enforcement of this chapter, the provisions (including penalties) of sections 46, 48, 49, and 50 of Title 50 (except paragraphs (e) through (h) of section 46 and the last paragraph of section 49 of Title 15), and the provisions of subsection 409(*l*) of Title 47, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering and enforcing the provisions of this chapter and to any person, firm, or corporation with respect to whom such authority is exercised. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this chapter in any part of the United States, and the powers conferred by said sections 49 and 50 of Title 15 on the district courts of the United States may be exercised for the purposes of this chapter by any court designated in section 674 of this title.

Mar. 4, 1907, c. 2907, Title IV, § 407, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 599.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 678. Non-Federal jurisdiction of Federally regulated matters; prohibition of additional or different requirements for establishments with inspection services and as to marking, labeling, packaging, and ingredients; record-keeping and related requirements; concurrent jurisdiction over distribution for human food purposes of adulterated or misbranded and imported articles; other matters

Requirements within the scope of this chapter with respect to premises, facilities and operations of any establishment at which inspection is provided under subchapter I of this chapter which are in addition to, or different than those made under this chapter may not be imposed by any State or Territory or the District of Columbia, except that any such jurisdiction may impose recordkeeping and other requirements within the scope of section 642 of this title, if consistent therewith, with respect to any such establishment. Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter, but any State or Territory or the District of Columbia may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment, or, in the case of imported articles which are not at such an establishment, after their entry into the United States. This chapter shall not preclude any State or Territory or the District of Columbia from making requirement or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter.

Mar. 4, 1907, c. 2907, Title IV, § 408, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 600.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

§ 679. Federal Food, Drug, and Cosmetic Act applications—Authorities under food, drug, and cosmetic provisions unaffected

(a) Notwithstanding any other provisions of law, including section 392(a) of this title, the provisions of this chapter shall not derogate from any authority conferred by the Federal Food, Drug, and Cosmetic Act prior to December 15, 1967.

Enforcement proceedings; detainer authority of representatives of Secretary of Health, Education, and Welfare

(b) The detainer authority conferred by section 672 of this title shall apply to any authorized representative of the Secretary of Health, Education, and Welfare for purposes of the enforcement of the Federal Food, Drug, and Cosmetic Act with respect to any carcass, part thereof, meat, or meat food product of cattle, sheep, swine, goats, or equines that is outside any premises at which inspection is being maintained under this chapter, and for such purposes the first reference to the Secretary in section 672 of this title shall be deemed to refer to the Secretary of Health, Education, and Welfare.

Mar. 4, 1907, c. 2907, Title IV, § 409, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 600.

References in Text. Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a) and (b), is classified to chapter 9 of this title.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

Cross References. Federal Food, Drug, and Cosmetic Act defined, see section 601 (q) of this title.

§ 680. Authorization of appropriations

These are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

Mar. 4, 1907, c. 2907, Title IV, § 410, as added Dec. 15, 1967, Pub.L. 90-201, § 16, 81 Stat. 600.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

SUBCHAPTER V.—MISCELLANEOUS PROVISIONS

§ 691. Reports to Congress

The Secretary shall annually report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate with respect to the slaughter of animals subject to this Act, and the preparation, storage, handling and distribution of carcasses, parts thereof, meat and meat food products, of such animals, and inspection of establishments operated in connection therewith, including the operations under and effectiveness of this Act.

Pub.L. 90-201, § 17, Dec. 15, 1967, 81 Stat. 600.

References in Text. For classification in the Code of this Act, referred to in the text, and meaning the Wholesome Meat Act, Pub.L. 90-201, see Short Title note under section 601 of this title.

Codification. Section was enacted as a part of the Wholesome Meat Act (for classification of which in the Code see Short Title note under section 601 of this title) and not as a part of the Federal Meat Inspection Act which is classified to subchapters I-IV of this chapter.

Effective Date. Section effective Dec. 15, 1967, see section 20 of Pub.L. 90-201, set out as a note under section 601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 90-201, see 1967 U.S.Code Cong. and Adm.News, p. 2188.

Effective Date. Section effective upon expiration of sixty days after Dec. 15, 1967, see section 20(d) of Pub.L. 90-201, set out as a note under section 601 of this title.

SEE COPY

JAN 5 1973

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-846

E. DALE SALL, Director of the Department of Agriculture of the State of Michigan,
RONALD M. LEACH, Acting Chief of the Food Inspection Division of the Michigan Department of Agriculture, and
FRANK J. KELLEY, Attorney General of the State of Michigan,
Petitioners,

v.

ARMOUR AND COMPANY, a Delaware Corporation,
WILSON & CO., INC., a Delaware Corporation, and
GEO. A. HORMEL & COMPANY, a Delaware Corporation,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION AND APPENDIX

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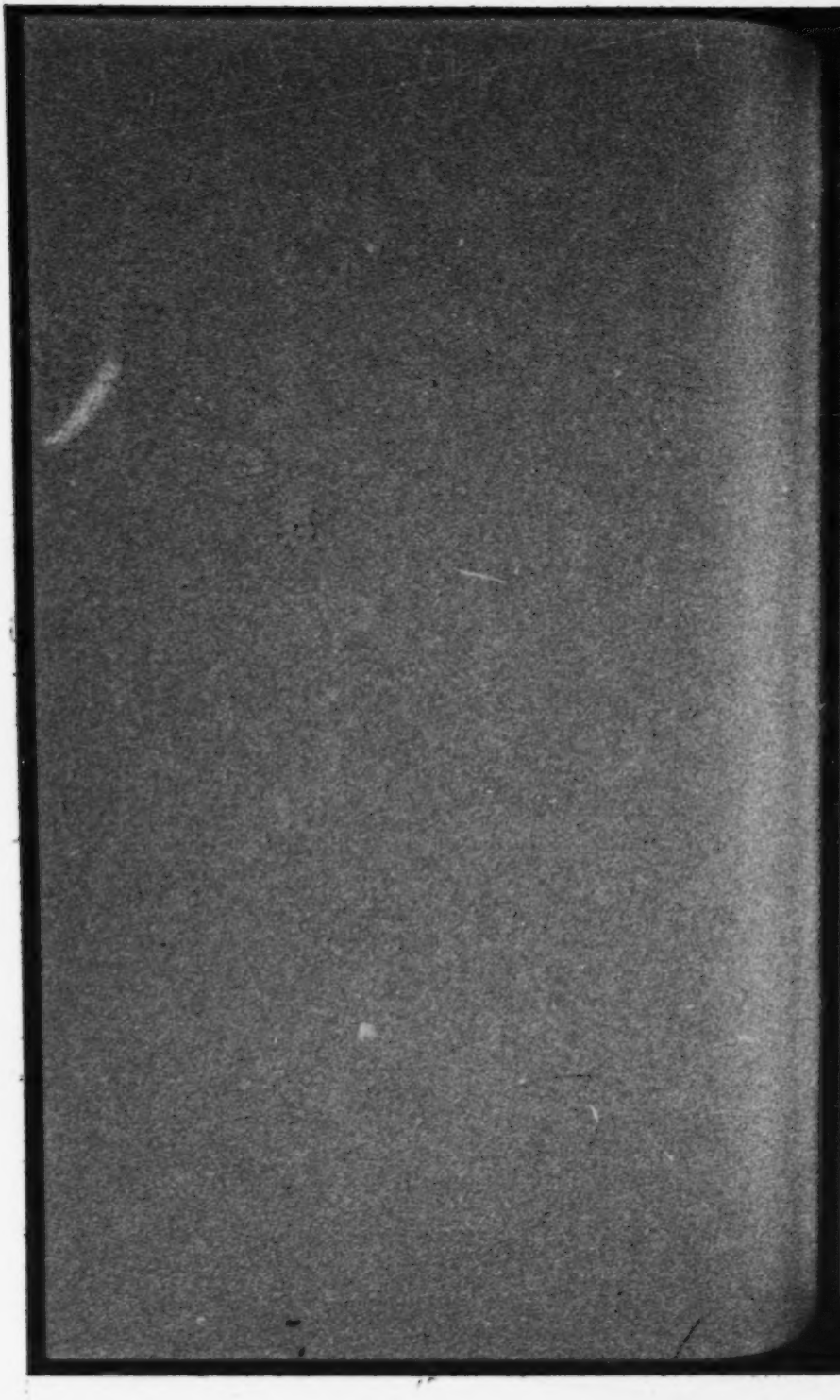

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-846

B. DALE BALL, Director of the Department of Agriculture of the State of Michigan,
RONALD M. LEACH, Acting Chief of the Food Inspection Division of the Michigan Department of Agriculture, and
FRANK J. KELLEY, Attorney General of the State of Michigan,
Petitioners,

v.

ARMOUR AND COMPANY, a Delaware Corporation,
WILSON & CO., INC., a Delaware Corporation, and
GEO. A. HORMEL & COMPANY, a Delaware Corporation,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (petitioners' Appendix, p. 1a *et seq.)* is unreported. The opinion of the Court of Appeals for the Sixth Circuit (petitioners' Appendix, p. 15a *et seq.)* is likewise unreported.

JURISDICTION

The Petition adequately sets forth the requisites for jurisdiction.

QUESTIONS PRESENTED

1. Whether the labeling and ingredient requirements of the Michigan Comminuted Meat Law may constitutionally be applied to meat products manufactured at federally inspected plants outside of Michigan for sale within the state, when the federal Wholesome Meat Act provides that no state may impose labeling or ingredient requirements "in addition to, or different than" those imposed by regulations adopted pursuant to the act with respect to such meat products.

2. Whether Congress, acting pursuant to its power to regulate interstate commerce, has power to provide that no state may impose labeling or ingredient requirements "in addition to, or different than" those imposed by regulations adopted pursuant to the federal Wholesame Meat Act with respect to meat products transported in interstate commerce.

3. Petitioners' question No. 3—"Whether a Federal District Court should abstain from issuance of an injunction against enforcement of a state criminal statute where no irreparable harm can be established"—, has no relevance to the case at hand because the Court of Appeals did not hold that respondents were entitled to injunctive relief without a showing of threatened irreparable injury.

4. Whether respondents lack "equity and good conscience" and are therefore not entitled to declaratory relief.

STATUTES AND REGULATIONS INVOLVED

The provisions of the federal Wholesome Meat Act, 21 U.S.C. § 601 *et seq.*, are set forth in petitioners' Appendix at pp. 53a-118a. The text of the Michigan Comminuted Meat Law, M.C.L.A. § 289.581 *et seq.*, M.S.A. § 12.964 (1) *et seq.*,[1] are set forth in petitioners' Appendix at pp. 40a-53a. Relevant sections of the federal regulations prescribed by the Secretary of Agriculture, 9 C.F.R. §§ 319.-140-144 & 319.180, are set forth in respondents' Appendix.

STATEMENT OF THE CASE

Plaintiffs-respondents, Armour and Company, Wilson & Company, Inc. and Geo. A. Hormel & Company, manufacture sausage products[2] at federally inspected plants outside Michigan for sale at wholesale and retail in Michigan. These sausage products must meet the labeling, packaging and ingredient requirements imposed by regulations issued by the Secretary of Agriculture pursuant to the federal Wholesome Meat Act, 21 U.S.C. § 601 *et seq.*

The Michigan Comminuted Meat Law, M.C.L.A. § 289.-581 *et seq.*, M.S.A. § 12.964 (1) *et seq.*, likewise imposes labeling, packaging and ingredient requirements for sausage products. Defendants B. Dale Ball and Ronald M. Leach, the Director of the Department of Agriculture of

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[1] References are to Michigan Compiled Laws Annotated and to Michigan Statutes Annotated, respectively.

[2] There are several kinds of sausage involved, including frankfurters, bologna and Vienna sausages.

the State of Michigan and the Chief of the department's Food Inspection Division, respectively, are charged with enforcing the act. After December 15, 1967, the effective date of the federal act, defendants continued to enforce, as against plaintiffs' sausage products, certain labeling and ingredient requirements of the Michigan act, notwithstanding the mandate of Section 408 of the federal act, 21 U.S.C. § 678, which declares that:

> . . . marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State . . . with respect to articles prepared at any [federally inspected] establishment . . .

The requirements of the Michigan act that defendants have continued to enforce against plaintiffs include, (1) a labeling requirement that all sausage of the kind involved here have the designation "Grade 1" applied to its package; (2) a labeling requirement that the name and address of the processor appear on the package of all sausage products, even though the label discloses the processor's trademark and the name and address of the distributor; and (3) an ingredient requirement that all sausage contain not less than 12% protein.[3]

Plaintiffs brought this suit for declaratory[4] and injunctive relief in the United States District Court for the Western District of Michigan. They asked for a determination that the labeling and ingredient requirements of

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[3] The labeling requirements are in addition to the requirements prescribed by the federal act and the Secretary. Although the federal regulation, 9 C.F.R. § 319.180, does not refer to protein, by fixing the requirements for other ingredients, it establishes a protein requirement of 11.2%.

[4] Pursuant to 28 U.S.C. § 2201.

the Michigan act are "in addition to, or different than" those imposed by regulations adopted pursuant to the federal act, and that the state may not therefore impose such requirements because Congress intended and directed that the federal requirements be the only requirements applicable to plaintiffs' sausage products. They asked, in addition, that defendants be enjoined from enforcing the requirements of the state act against them insofar as their sausage products are subject to the requirements imposed by the federal regulations.

Defendants answered, admitting that they had continued to enforce the requirements of the Michigan act against plaintiffs. No prosecution under the Michigan act was pending against any of the plaintiffs when they began this suit.[5]

Both plaintiffs and defendants moved for summary judgment. The cause was submitted to the District Court on the complaint, answer, affidavits, a short stipulation, the motions for summary judgment, briefs and oral argument. The Court denied plaintiffs' motion and granted defendants'.

Notwithstanding that plaintiffs and defendants had agreed that the only question was whether Section 408 of the federal act foreclosed defendants from enforcing the labeling and ingredient requirements of the state act against plaintiffs' sausage products, the District Court

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[5] In 1968, before this suit was filed, plaintiff Amour and Company was prosecuted for violation of the Michigan act. The prosecution ended with a guilty plea and payment of a fine. Over two years after plaintiffs filed this suit, Amour was again prosecuted. That prosecution has been held in abeyance pending a final decision in this suit. An Amour subsidiary, not a party to this suit, is also the subject of a pending prosecution begun approximately one year after this suit was begun. That prosecution has also been held in abeyance.

held that plaintiffs were required to show that enforcement of the state act would irreparably injure them in order to sue for declaratory or injunctive relief, that plaintiffs had failed to show that they would be irreparably injured by the enforcement of the act, and that plaintiffs were not entitled to declaratory or injunctive relief because they lacked "equity and good conscience."

The Court of Appeals for the Sixth Circuit reversed. Relying on *Lake Carriers' Ass'n* v. *MacMullan*, . . . U.S. ....., 32 L. Ed.2d 257 (1972), the Court held that plaintiffs were not required to show threatened irreparable injury in order to sue for a declaratory judgment that the state act had been preempted because no prosecution under the statute was pending against any of them when the suit was brought. The Court did not, as petitioners misstate that it did, hold that plaintiffs were entitled to ininjunctive relief without first showing that enforcement of the state act would irreparably injure them.

So far as preemption, the Court held that the regulations issued by the Secretary of Agriculture pursuant to Section 7 of the federal act, 21 U.S.C. § 607, established marking, labeling and ingredient requirements for the meat products to which they apply, that the marking, labeling and ingredient requirements imposed by the Michigan law were "in addition to, or different than" the federal requirements established by the regulations, and that the marking, labeling and ingredient requirements of the Michigan act were therefore, under Section 408 of the federal act, 21 U.S.C. § 678, preempted by the federal regulations.

ARGUMENT

1. THERE IS NO SUBSTANTIAL FEDERAL QUESTION REQUIRING REVIEW BY THIS COURT SINCE THE COURT OF APPEALS WAS CLEARLY RIGHT IN HOLDING THAT THE LABELING AND INGREDIENT REQUIREMENTS OF THE MICHIGAN LAW MAY NOT CONSTITUTIONALLY BE APPLIED TO MEAT PRODUCTS MANUFACTURED OUTSIDE THE STATE FOR SALE IN MICHIGAN.

The decision by the Court of Appeals does not conflict with any decision by any other court of appeals, or with applicable decisions of this Court, nor is there any substantial federal question requiring review by this Court because the decision was clearly right and conforms to this Court's ruling in *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142 (1963), that federal regulation preempts state regulatory power in cases where "Congress has unmistakably so ordained."

A. The Ingredient Requirements Referred to by Section 408 of the Federal Act are the "Definitions and Standards of Identity or Composition" Imposed by the Regulations Adopted by the Secretary of Agriculture Pursuant to Section 7 of the Federal Act.

Section 10(b) of the federal Wholesome Meat Act, 21 U.S.C. § 610(b), forbids the sale or transportation of "misbranded" meat products in commerce. According to Section 1(n) (7) of the act, 21 U.S.C. § 601 (n) (7), a product is "misbranded" if it purports to be or is represented as a food product for which a "definition and standard of identity or composition" has been prescribed by regulations of the Secretary of Agriculture under Section 7 of the act, and does not conform to the definition and standard prescribed.

Section 7 of the federal act, 21 U.S.C. § 607, deals with marking and labeling and, in addition, authorizes the Secretary to establish "definitions and standards of identity or composition" for meat products. The Secretary has by regulation prescribed such definitions and standards of identity or composition, and these, as the Court of Appeals held, establish ingredient requirements for the meat products to which they apply. See 9 C.F.R. § 319.1 *et seq.* These ingredient requirements are the "ingredient requirements" referred to by Section 408 of the federal act, 21 U.S.C. § 678, which provides that a state may not impose "ingredient requirements in addition to, or different than, those made under [the federal act]," with respect to articles prepared at any federally inspected establishment.

Defendants argue that the "definitions and standards of identity or composition" that Section 7 of the act authorizes the Secretary to prescribe must have the "purpose of informing consumers of the nature of the product by requiring honest labels," and apparently infer that he may not establish "ingredient" or "nutritional" requirements. (Petition, p. 10)

First of all, the federal act does authorize the Secretary to establish "ingredient" requirements for meat products. The evidence of this is that Section 408 of the act provides that states may not impose "ingredient requirements" which are "in addition to, or different than" those imposed pursuant to the act. If the Secretary is not authorized to establish ingredient requirements, then Section 408's reference to "ingredient requirements" is meaningless.

If, as Section 408's reference to "ingredient requirements" necessarily establishes, "ingredient requirements" may be imposed by regulations adopted by the

Secretary, then those "ingredient requirements" must be the "definitions and standards of identity or composition" that Section 7(c) (2) of the act authorizes the Secretary to prescribe "whenever he determines such action is necessary for the protection of the public." This is obviously so because the requirements he may impose pursuant to Section 7 (c) (2) are the only requiremtnts that he is authorized to impose pursuant to the act that may be described as "ingredient requirements."

The Secretary's authority to establish "ingredient" requirements pursuant to Section 7 (c) of the act may be inferred from the section's reference to "definitions and standards of identity *or composition.*" As the Court of Appeals held, the plain meaning of the term "composition" is the mix of ingredients making up the meat product.

Moreover, Section 7(c) (2) authorizes the Secretary to prescribe "definitions and standards of identity or composition . . . not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act. . . ." Congress thus meant for the Secretary to have authority to adopt the same "definitions and standards of identity" as the Administrator may establish pursuant to the Food, Drug and Cosmetic Act. In *Federal Security Administrator v. Quaker Oats Co.*, 318 U.S. 218 (1943), this Court held that the Food, Drug and Cosmetic Act authorized the Administrator to adopt a "definition and standard of identity" for farina which established ingredient requirements for the product, and that his authority was not limited to preventing false and misleading labeling:

> . . . [I]t was found that such a prohibition [against false and misleading labeling] was inadequate to protect the consumer from "economic

> adulteration," by which less expensive ingredients were substituted, or the proportion of more expensive ingredients diminished, so as to make the product, although not in itself deleterious, inferior to that which the consumer expected to receive when purchasing a product with the name under which it was sold. . . . The remedy chosen was not a requirement of informative labeling. Rather it was the purpose to authorize the Administrator to promulgate definitions and standards of identity "under which the integrity of food products can be effectively maintained". . . . 318 U.S. at 230.

What was held with respect to the Food, Drug and Cosmetic Act applies equally to regulations adopted pursuant to Section 7(c)(2) of the Wholesome Meat Act, and we must therefore infer that the Secretary has authority to establish ingredient requirements by the "definitions and standards of identity or composition" which that section authorizes him to prescribe.

An examination of the federal regulations discloses that they do require more than honest labeling—that they impose ingredient requirements designed to maintain the integrity of the meat products to which they apply. So far as sausage of the type in issue here, 9 C.F.R. § 319.180 provides that they shall not contain (a) more than 30% fat, (b) more than approximately 4% binders, seasonings and other permitted additives, and (c) more than 10% added water. Although no reference is made to protein, the regulation, by fixing the requirements for other ingredients, does establish a protein requirement of 11.2%. Since the product may contain no more than 44% fat, added water and binders, seasonings and other permitted additives, 56% of the product must consist of protein and natural water. Since meat has four parts of natural water for

each part of protein, 44.8% (80% of 56%) of the product will be natural moisture, and 11.2% (20% of 56%) will be protein.

The foregoing ingredient requirements cannot be understood in terms of informing consumers of the nature of the product. They are, instead, ingredient requirements designed to maintain the wholesomeness and integrity of the meat product.

In support of their argument that the Secretary is authorized only to require "honest labels," defendants rely on Senate Report No. 799, 90th Cong., 1st Sess., 2 U.S. Code Cong. & Ad. News 2188 (1967), and *Houston* v. *St. Louis Independent Packing Co.*, 249 U.S. 479 (1919). At the very most, the Senate Report and the *Houston* case suggest that the federal act and regulations are aimed at requiring that meat products have the ingredients that consumers expect them to have. Conceding that the Secretary may thus be required to look to what ingredients consumers expect "sausage" products to have when he prescribes ingredient requirements, and that the requirements of the state act may have been determined by what the Legislature believed consumers should receive in the way of nutritional value, regardless of their expectations about "sausage" products, the fact still remains that the Secretary is authorized to prescribe, and has prescribed, "ingredient" requirements. Since the Secretary has prescribed "ingredient" requirements, Section 408 of the act applies to preempt any requirements of the state act "in addition to, or different than" the federal requirements.

B. The Requirements of the Michigan Act Are "in Addition to, or Different Than" Those Imposed by Regulations Adopted Pursuant to the Federal Act, and Are Therefore Preempted by Section 408 of the Federal Act.

So far as ingredients are concerned, Section 3 of the Michigan act, M.C.L.A. § 289.583, M.S.A. § 12.964(3), requires the sausage products here involved to meet the specifications for "Grade 1 sausage." Section 2(a) of the act, M.C.L.A. § 289.582(a), M.S.A. 12.964 (2)(a), provides that Grade 1 sausage shall consist only of skeletal fresh meat from cattle, swine or sheep, or the striated muscle of chicken or turkey. On the other hand, 9 C.F.R. § 319.180 authorizes the use of "meat byproducts," which include "any part capable of use as human food, other than meat." 9 C.F.R. § 301.2(uu).

With the exception of pork sausage, breakfast sausage or roasted sausage, the Michigan statute requires a protein content of not less than 12%. M.C.L.A. § 289.582(a)(1), M.S.A. § 12.964(2)(a)(1). As explained above, although 9 C.F.R. § 319.180 does not refer to protein, if the other ingredient requirements are met, a protein requirement of 11.2% results.

The Michigan statute forbids the addition of water to sausage. M.C.L.A. § 289.582(a)(1), M.S.A. § 12.964(2)(a)(1). The federal regulation, 9 C.F.R. § 319.180, however, permits 10% of added water.

So far as labeling, Section 4 of the Michigan act, M.C.L.A. § 289.584, M.S.A. § 12.964.(4), requires the name and address of the manufacturer to be plainly marked on each package. On the other hand, 9 C.F.R. § 317.2(c) (3) permits use of the name and place of business of the manufacturer, packer or distributor.

The foregoing are some of the requirements imposed by the state act that are obviously additional to or different than the requirements prescribed by the Secretary pursuant to the federal act. Others are collected and analyzed by the Court of Appeals in the appendix to its opinion.

Section 408 of the federal act, 21 U.S.C. § 678, declares that:

> . . . Marking, labeling, packaging, or ingredient requirements *in addition to, or different than* those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter, but any State or Territory or the District of Columbia may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment. . . . [emphasis added]

In *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142 (1963), this Court held that federal regulation preempts state regulatory power whenever "Congress has unmistakably so ordained." In this case, Congress has unmistakably ordained that no state shall impose any labeling or ingredient requirements additional to or different than those imposed by the Secretary.

Although the language of section 408 speaks for itself, the fact that Congress meant for the federal labeling and ingredient requirements to be the only requirements applicable to federally inspected meat products may be inferred from its use of identical language in amending

the Poultry Products Inspection Act, 21 U.S.C. § 451 *et seq.*, to provide that:

> . . . Marking, labeling, packaging, or ingredient requirements . . . *in addition to, or different than,* those made under this chapter may not be imposed by any State . . . with respect to articles prepared at any official establishment in accordance with the requirements under this chapter. [emphasis added]

The amendment was added by Public Law 90-42 of August 12, 1968, 21 U.S.C. § 467(e), following the decision of the Court of Appeals in *Swift & Co.* v. *Wickham,* 364 F.2d 241 (2d Cir. 1966) *cert. denied,* 385 U.S. 1036 (1967), that the Poultry Products Inspection Act did not preclude New York from imposing labeling requirements for turkeys in addition to or different than those required by the federal act. The District Court in the *Wickham* case, finding no "unambiguous congressional mandate" that the federal requirements were to be the only requirements, held against preemption, and the Court of Appeals affirmed, agreeing that Congress had not "unmistakably ordained" that the federal act was to preempt state regulation. A fair assumption is that Congress amended the Poultry Products Inspection Act to meet the decision by the Court of Appeals in the *Wickham* case and, by the amendment, unmistakably ordained that the federal requirements were to be the only requirements. So far as meat products subject to the labeling and ingredient requirements of the regulations adopted pursuant to the federal Wholesome Meat Act, we submit that Congress likewise, by section 408 of the act, unmistakably ordained that the federal requirements were to be the only requirements.

Only one appellate court, other than the Court below, has dealt with the effect of Section 408. In *Meat Trade*

Institute, Inc. v. *McLaughlin*, 37 A.D.2d 456, 326 N.Y.S.2d 683 (1971), the Appellate Division of the New York Supreme Court, in a *per curiam* opinion, held that section 408 foreclosed the City of New York from imposing labeling requirements for federally inspected meat products, stating that the section "explicitly ordained that the Secretary of Agriculture has exclusive jurisdiction of the labeling requirements of meat products produced in federally inspected meat packing plants."

C. Section 408 of the Federal Act Preempts Regulation by Both the State in Which the Product is Sold and by the State in Which It Is Manufactured.

In this case, Congress has unmistakably ordained that no state, whether it be the state in which the product is manufactured or the state to which the product is shipped for sale, shall impose any labeling or ingredient requirements additional to or different than those prescribed by the Secretary. A specific exception is made only where public health is endangered by adulteration, or where misbranding occurs, and the federally inspected product is outside of the manufacturer's plant. According to Section 408, a state may then exercise concurrent jurisdiction with the federal authorities "for the purpose of preventing the distribution for human food purposes" of the product. No other exceptions are provided for.

Defendants' suggestion (Petition, p. 10) that Congress intended preemption only at the manufacturing end of the stream of commerce, leaving the states free to continue regulation at the distribution end, is untenable. Not only is the language of Section 408 unqualified by any such limitation, if the section is interpreted as defendants propose, the specific exception authorizing the states to exer-

cise concurrent jurisdiction to prevent the distribution of adulterated or misbranded products once they are outside the manufacturer's plant would have been unnecessary because the exception clearly appears to have been made to enable the state to which the product is shipped to protect local consumers by preventing its distribution. If the section was not meant to preempt any regulation by the state to which the product is shipped for sale, the exception would have been unnecessary.

We submit that Congress meant for meat products manufactured at federally inspected establishments for interstate shipment to be subject to only the labeling and ingredient requirements of the regulations adopted pursuant to the requirements of the Wholesale Meat Act. Article VI of the United States Constitution requires that this direction by Congress be obeyed, and defendants may thus not constitutionally enforce the ingredient and labeling requirements of the Michigan act against plaintiffs' meat products.

2. CONGRESS, ACTING PURSUANT TO ITS POWER TO REGULATE INTERSTATE COMMERCE, HAS POWER TO PROVIDE THAT NO STATE MAY IMPOSE LABELING OR INGREDIENT REQUIREMENTS "IN ADDITION TO, OR DIFFERENT THAN" THOSE IMPOSED BY REGULATIONS ADOPTED PURSUANT TO THE FEDERAL WHOLESOME MEAT ACT WITH RESPECT TO MEAT PRODUCTS TRANSPORTED IN INTERSTATE COMMERCE.

Defendants argue that "The power of Congress under the interstate commerce clause does not authorize it to void traditional state laws enacted to protect the health of its citizens," citing *Pike* v. *Church*, 397 U.S. 137 (1970). (Petition, p. 8) In the *Pike* case, the question was not whether Congress had power "to void traditional state

laws," but was whether the enforcement of an Arizona statute requiring that cantaloupes grown in the state be packaged in closed, standard containers, against a grower shipping interstate resulted in an unconstitutional burden on interstate commerce.

There is no question but that the Commerce Clause authorizes Congress to regulate the ingredients of products shipped interstate, *Hipolite Egg Co.* v. *United States,* 220 U.S. 45 (1913); *United States* v. *Carolene Products Co.,* 304 U.S. 144 (1938). It is likewise beyond question that state law must yield if Congress elects to make its regulation exclusively applicable. *Campbell* v. *Hussey,* 368 U.S. 297, 302 (1961); *Southern Pacific Co.* v. *Arizona,* 325 U.S. 761, 769 (1945); *Cloverleaf Butter Co.* v. *Patterson,* 315 U.S. 148 (1942); *McDermott* v. *Wisconsin,* 228 U.S. 115 (1913). As this Court stated in *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947):

> Congress may, if it chooses, take unto itself all regulatory authority . . . share the task with the States, or adopt as federal policy the state scheme of regulation. . . . *The question in each case is what the purpose of Congress was.* [emphasis added]

In this case, Congress may therefore require that the states not impose labeling or ingredient requirements "in addition to, or different than" those imposed by regulations adopted pursuant to the federal act with respect to meat products transported in interstate commerce.

3. PETITIONERS' QUESTION No. 3 HAS NO RELEVANCE TO THE CASE AT HAND BECAUSE THE COURT OF APPEALS HELD ONLY THAT RESPONDENTS WERE ENTITLED TO DECLARATORY RELIEF WITHOUT A SHOWING THREATENED IRREPARABLE INJURY.

Defendants' question No. 3—"Whether a Federal District Court should abstain from issuance of an injunction against enforcement of a state criminal statute where no irreparable harm can be established"—, has no relevance to the case at hand because the Court of Appeals did not hold that plaintiffs were entitled to injunctive relief without a showing of threatened irreparable injury. Plaintiffs sued for both declaratory and injunctive relief. The District Court held that they were required to show that enforcement of the state act would irreparably injure them in order to sue for either injunctive or declaratory relief, that they had failed to make the necessary showing, and therefore dismissed the complaint. Relying on *Lake Carriers Ass'n* v. *MacMullan*, ... U.S. ...., 32 L. Ed.2d 257 (1972), the Court of Appeals reversed, holding that plaintiffs were not required to show threatened irreparable injury in order to sue for declaratory relief because no prosecution under the state act was pending against any of them when the suit was brought. The Court did not, as defendants misstate that it did, hold that plaintiffs were entitled to injunctive relief without first showing that enforcemment of the state act would irreparably injure them.

This Court's holding in the *MacMullan* case establishes that a party seeking declaratory relief in the federal courts with respect to a state criminal statute is not required to show threatened irreparable injury unless a proceeding under the statute is pending against him. As the Court of Appeals here held, a pending proceeding means one pending when the suit is brought.

4. PETITIONERS' ARGUMENT THAT RESPONDENTS ARE NOT ENTITLED TO DECLARATORY RELIEF BECAUSE THEY LACK "EQUITY AND GOOD CONSCIENCE" IS UNSUBSTANTIAL.

Defendants argue that certiorari should be granted to review the question whether plaintiffs lack "equity and good conscience" and are therefore not entitled to declaratory or other equitable relief. This argument is so unsubstantial that the Court of Appeals did not deal with or even refer to it.

The District Court held that declaratory relief is equitable relief subject to the generally established rules of equity, that equitable relief may not be had by a party lacking "equity and good conscience" because they were seeking "to avoid the admittedly higher standards of the Michigan act, while offering as their sole reason the maximization of corporation profits." The complete answer to the District Court's holding, and to defendants' argument, is that if Congress directed that plaintiffs were required to comply with only the federal requirements, surely they cannot be said to lack "equity and good conscience" for desiring to comply with only those requirements. If plaintiffs are required to comply with both the federal and state requirements, the additional cost of complying with both will put them at an economic disadvantage in competing with local manufacturers who comply with only the state requirements. Congress, by requiring compliance with only federal requirements, meant to eliminate any such competitive disadvantage.

CONCLUSION

For the foregoing reasons, respondents submit that defendants' petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

TITLE 9, CODE OF FEDERAL REGULATIONS, PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

Subpart E—Sausage Generally: Fresh Sausage[1]

§ *319.140 Sausage.*

Except as otherwise provided in this section, or under the Poultry Products Inspection Act with respect to products consisting partly of poultry, sausage is the coarse or finely comminuted meat food product prepared from one or more kinds of meat or meat and meat byproducts, containing various amounts of water as provided for elsewhere in this part, and usually seasoned with condimented proportions of condimental substances, and frequently cured. Certain sausage as provided for elsewhere in this part may contain binders and extenders; e.g., cereal, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate, isolated soy protein, nonfat dry milk, calcium reduced skim milk or dried milk. The finished product shall contain no more than 3.5 percent of these additives individually or collectively. Two percent of isolated soy protein shall be deemed equivalent to 3½ percent of any one or more of these binders. Sausage may not contain phosphates except that uncooked pork from cuts cured with phosphates listed in § 318.7(c) (4) of this subchapter may be used in cooked sausage. To facilitate chopping or mixing or to dissolve the usual curing ingredients, water or ice may be used in the preparation of sausage which is

[1] 36 F.R. 12004, June 24, 1971.

not cooked in an amount not to exceed 3 percent of the total ingredients in the formula. Cooked sausages such as Polish sausage, cotto salami, braunschweiger, liver sausage, and similar cooked sausage products may contain no more than 10 percent of added water in the finished product.

[35 F.R. 15597, Oct. 3, 1970, as amended at 12004, June 24, 1971]

§ *319.141 Fresh pork sausage*

"Fresh Pork Sausage" is sausage prepared with fresh pork or frozen pork, or both, not including pork byproducts, and may be seasoned with condimental substances as permitted under Part 318 of this subchapter. It shall not be made with any lot of product which, in the aggregate, contains more than 50 percent trimmable fat, that is, fat which can be removed by thorough, practicable trimming and sorting. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3 percent of the total ingredients used.

§ *319.142 Fresh beef sausage.*

"Fresh beef sausage" is sausage prepared with fresh beef or frozen beef, or both, not including beef byproducts, and may be seasoned with condimental substances as permitted under Part 318 of this subchapter. The finished product shall not contain more than 30 percent fat. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3 percent of the total ingredients used.

§ *319.143 Breakfast sausage.*

"Breakfast sausage" is sausage prepared with fresh and/or frozen meat, or meat and meat byproducts and

may be seasoned with condimental substances as permitted in Part 318 of this subchapter. It shall not be made with any lot of products which, in the aggregate, contains more than 50 percent trimmable fat; that is, fat which can be removed by thorough practicable trimming and sorting. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3 percent of the total ingredients used. Extenders or binders as listed in Part 318 of this subchapter may be used to the extent of 3½ percent of the finished sausage as permitted in § 319.-140.

§ *319.144 Whole hog sausage.*

"Whole Hog Sausage" is sausage prepared with fresh and/or frozen meat from swine in such proportions as are normal to a single animal and may be seasoned with condimental substances as permitted in Part 318 of this subchapter. It shall not be made with any lot of product which, in the aggregate, contains more than 50 percent trimmable fat; that is, fat which can be removed by thorough practicable trimming and sorting. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3 percent of the total ingredients used.

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Subpart G—Cooked, Smoked Sausage

§ *319.180 Frankfurter, wiener, vienna, bologna, garlic bologna, knockwurst, and similar products.*

"Frankfurter," "Wiener," "Vienna," "Bologna," "Garlic Bologna," "Knockwurst," and similar sausages are comminuted semisolid meat food products which are prepared from one or more kinds of meat or meat and meat byproducts, poultry products, and other ingredients as permitted by this section, seasoned and cured using one or more of

the curing agents in accordance with § 318.7(b) of this subchapter. The finished products shall not contain more than 30 percent fat. Water and/or ice may be used to facilitate chopping or mixing or to dissolve the curing ingredients, but the sausage shall contain no more than 10 percent of added water. One or more of the following binders or extenders may be used, which individually or collectively shall not exceed 3½ percent of the total ingredients in the sausage, except that 2 percent of isolated soy protein shall be deemed to be the equivalent of 3½ percent of any one or more of the other binders: dried milk, nonfat dry milk, calcium reduced dried skim milk, cereal, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate, and isolated soy protein. Partially defatted pork fatty tissue or partially defatted beef fatty tissue or a combination of both may be used in an amount not exceeding 15 percent of the meat and meat byproduct ingredients. These products may contain uncooked cured pork which does not contain any phosphates or contains only phosphates approved under Part 318 of this subchapter. These sausage products also may contain poultry products which, individually or in combination, are not in excess of 15 percent of the total ingredients excluding water, in the sausage. Such poultry products must be free of kidneys and sex glands, and the amount of skin present must not exceed the natural proportion of skin present on the whole carcass of the kind of poultry used in the sausage, as specified in the regulations under the Poultry Products Inspection Act (7 CFR 81.131 (g)). For purposes of this subparagraph, poultry products means chicken or turkey, chicken or turkey meat, or chicken or turkey byproducts as defined in the regulations under the Poultry Products Inspection Act (7 CFR Part 81). They shall be designated in the ingredient statement on the label of such sausage

in accordance with the provisions of said regulations. Sausage products within this section if labeled "all meat" shall contain only beef, pork, veal, mutton, lamb, or goat meat, or chicken or turkey meat (without skin but otherwise as provided in this section), or any combination thereof, and condiments, curing agents and water as permitted by this section and § 318.7 of this subchapter. If labeled "all (species)," e.g., "All Beef Franks" or "All Pork Franks," these sausages shall contain only meat of the specified species, with condiments, curing agents, and water as permitted by this section and § 318.7 of this subchapter.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-846

B. DALE BALL, DIRECTOR OF THE DEPARTMENT OF AGRICULTURE OF THE STATE OF MICHIGAN, ET AL., PETITIONERS

v.

ARMOUR AND COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

This memorandum is filed pursuant to the Court's order of February 20, 1973, inviting the Solicitor General to express the views of the United States in this case. We discuss only the preemption issue since that is the only question that directly involves the United States.

STATEMENT

Respondents, who manufacture a variety of sausage and other meat products, brought this suit for declaratory and injunctive relief against the administrators of the Michigan Comminuted Meat Law. They contended that the labeling and ingredient requirements of the

Michigan statute were preempted by Section 408 of the Federal Meat Inspection Act, 21 U.S.C. 678.[1]

Without reaching the preemption issue, the district court granted summary judgment to the State officials (Pet. App. 1a-14a). The court denied declaratory and injunctive relief on the grounds that the plaintiffs had not shown irreparable injury (Pet. App. 4a-11a) and that they lacked "equity and good conscience" (Pet. App. 13a).

On appeal the Sixth Circuit reversed and remanded to the district court for further proceedings. The court of appeals held that the threatened enforcement of State law rendered declaratory relief appropriate. On the merits, the court held that, "in view of its unambiguous language, Section 408 [proscribing State labeling and ingredient requirements 'in addition to, or different than, those made under this chapter'] reflects unequivocal legislative purpose to make the Federal Act preemptive" (Pet. App. 33a).

DISCUSSION

1. Federal regulation within an area of congressional competency preempts state regulatory power where "the Congress has unmistakably so ordained." *Florida*

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[1]The main issues concerned Michigan's requirements (1) that sausage be labeled "Grade 1," and, as such, that it contain only skeletal meat and no organs or meat by-products; and (2) that such products contain at least 12 percent protein (Pet. App. 26a).

The federal statute and implementing regulations do not use or require the classification or label "Grade 1" on sausage products: they permit the use in such products of edible organs and meat by-products; and they do not require a 12 percent protein content, but provide a formula which calls for 11.2 percent protein. See 9 C.F.R. 317.2(c), 319.140—319.144, and 319.180. See also the appendix to the court of appeals opinion (Pet. App. 35a-40a).

Avocado Growers v. *Paul,* 373 U.S. 132, 142; *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230. Congress has explicitly precluded the states from imposing additional requirements upon meat that has been federally inspected under the Federal Meat Inspection Act. Section 408 of that Act (21 U.S.C. 678) provides:

> Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State * * * with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter * * *.[2]

Pursuant to his statutory authority (21 U.S.C. 607(c)) the Secretary of Agriculture has prescribed both labeling requirements and "standards of identity or composition" for meats and meat products distributed in interstate commerce, including comminuted meat (sausage) products. 9 C.F.R., Parts 317, 318, 319.[3]

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[2]See also S. Rep. No. 799, 90th Cong., 1st Sess., 18: "Section 408 [of the Federal Meat Inspection Act] would exclude States * * * from regulating operations at plants inspected under title I or from imposing marking, labeling, packaging, or ingredient requirements in addition to or different than those under the Federal Meat Inspection Act for articles prepared under inspection in accordance with title I of the Act * * *."

[3]The Secretary's power to inspect packing establishments (21 U.S.C. 603 *et seq.*) and to prescribe labeling and ingredient requirements for meat products prepared at such establishments (21 U.S.C. 607) does not ordinarily extend to establishments whose products are not distributed in commerce (*i.e.*, intrastate establishments); the States retain jurisdiction over such establishments and the products thereof, under 21 U.S.C. 661(a)(1), subject to the provisions of 21 U.S.C. 661(c)(3), authorizing the application of titles I and IV of the Federal Meat Inspection Act to intrastate establishments if the State does not provide standards at least as stringent as the federal standards.

Respondents' products were all prepared at federally-inspected establishments in accordance with subchapter I of the Act, and presumably met the federally-prescribed labeling, identity and composition standards. Section 408 therefore bars the State of Michigan from imposing upon those products the additional labeling and ingredient requirements of its law.

Petitioners argue that Congress "could only have intended preemption at the manufacturing end of the stream of commerce leaving the states free to continue regulation at the distribution end" (Pet. 10). Labeling and ingredient requirements, however, as a practical matter can only be met at the manufacturing point, *i.e.*, the place where sausage products are prepared and packaged. Moreover, the requirements are intended "to prevent and eliminate burdens upon [interstate] commerce" and to protect the "health and welfare of consumers." Federal Meat Inspection Act, Section 2 (21 U.S.C. 602) (see Pet. App. 69a-70a). It would have been anomalous for Congress, concerned, among other things, with burdens on interstate commerce, expressly to have preempted labeling and ingredient requirements at federally-inspected packing establishments, but to permit the States to impose different standards after the product has left the packing establishment on its way to the consumer.

2. Petitioners also argue that the Michigan labeling and ingredient requirements cannot constitutionally be preempted, since they are imposed "to protect the health of its citizens" (Pet. 8, 12).[4] The federal law,

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[4] *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, relied on by petitioners, held that an Arizona regulation on packaging of cantaloupes, as applied to cantaloupes shipped outside the State for packaging, was an unconstitutional burden on interstate commerce, in view of the lack of a substantial local public interest in such packaging requirements. No federal regulation or preemption question was involved.

of course, has the same purpose—to protect "the health and welfare of consumers" (21 U.S.C. 602).[5] Congress has the power to protect the public health through regulation of food items distributed in commerce. *Pittsburgh Melting Co.* v. *Totten,* 248 U.S. 1, 8; *McDermott* v. *Wisconsin,* 228 U.S. 115, 128. In exercising a constitutional power "Congress may, if it chooses, take unto itself all regulatory authority * * *." *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230.

This conclusion is not affected by the second clause of the preemption provision of 21 U.S.C. 678, which provides:

> but any State * * * may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment * * *.

The meaning of this provision—read in the context of the preemption clause of which it is a part—is clear. States are permitted to take appropriate action for the purpose of "preventing the distribution * * * of

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[5]Section 10(b) of the federal Act, 21 U.S.C. 610(b), prohibits the sale, transport or offer for sale or transportation of meat which is "adulterated." Section 1(m) of the Act, 21 U.S.C. 601(m), defines "adulterated" as including any meat or meat product "if it bears or contains any poisonous or deleterious substance which may render it injurious to health." Thus, the federal statute specifically prohibits the sale of adulterated meats and is therefore directly concerned with "assur[ing] consumers of wholesome and healthy meat products." S. Rep. No. 799, 90st Cong., 1st Sess., 3.

* * * articles which are adulterated or misbranded." This permits the states to aid in implementing the federal standards by moving against articles not in a federally-inspected plant that are adulterated or misbranded. The clause does not authorize the states, however, to impose additional labeling or ingredient requirements upon products prepared at federally inspected establishments.

CONCLUSION

The court of appeals correctly held that the federal law preempts the Michigan law. The petition for a writ of certiorari should be denied with respect to the first two questions presented, which deal with this issue.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.

CERTIORARI DENIED